Split Estates

The relationship between surface and minerals

A Report to the 60th Legislature
October 2006

The House Bill No. 790
Split Estates/Coal Bed Methane
Subcommittee of the
Environmental Quality Council

prepared by Joe Kolman, Research Analyst

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The House Bill No. 790 Split Estates/Coal Bed Methane Subcommittee of the Environmental Quality Council

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Introduction

From its first meeting in Havre in August of 2005, the House Bill No. 790 Subcommittee of the Environmental Quality Council embarked on a fact-finding mission about oil and gas development in Montana; specifically the issues surrounding split estates and coal bed methane development.

To fulfill that goal, members hit the road. In addition to Havre, field hearings were held in Sheridan, Wyoming and Sidney. The panel also met six times in Helena. Public comment was heavily solicited—press releases went to all regional newspapers and other media outlets. Issues open to comment at the meetings included reclamation and bonding for oil and gas operations and how to handle split estates, the situation that arises when one party owns surface rights to land and another party owns the mineral rights below the property.

Citizen interest was high. The public provided several hours of comment at each of the field hearings. A total of nearly 80 people testified at those three hearings. Public comment was taken at each of the Helena meetings as well.

The panel members saw first-hand how oil and gas operations are conducted and reclaimed.

Subcommittee members traveled a total of more than 1,600 miles to the three field hearings, which also included tours of conventional gas operations, oil wells, and coal bed methane facilities. Enduring dusty roads in buses and the extremes of Montana weather—the temperature in Havre passed 100 degrees while the thermometer in Sidney read below zero—the panel members saw first-hand how oil and gas operations are conducted and reclaimed.

Included in this report are the Subcommittee's findings in each of the study areas mandated by House Bill No. 790. Also included in some of those areas are recommendations for action. Detailed extensively in the report and the appendices is

the research that the Subcommittee reviewed and considered and more details on the solicitation of public comment and site tours. In regard to the decisionmaking process that the Subcommittee undertook to arrive at its conclusions, the Subcommittee decided that recommendations to the Environmental Quality Council would need to garner at least 8 votes out of the 12 members. While members said that they would strive to reach consensus, they also acknowledged that doing so on all matters related to what could be contentious issues may not be realistic. Brief summaries of votes on issues that earned at least half of the Subcommittee votes but failed to reach the supermajority are included in the Decisionmaking Process section.

Findings & Recommendations

Based on the direction of House Bill No. 790 **(Appendix A)** passed by the 2005 Legislature, the Subcommittee delved into nine areas; conducting research, listening to presentations, and soliciting public comment. Following are the specific subject areas as well as findings and recommendations. Recommended legislation is included in the proposed bill draft located in **Appendix B**. The proposed brochure is in **Appendix C**.

Study the procedures and timelines for giving notice to surface owners.

⇨ **Finding:** Much public testimony centered around what some perceive to be a lack of informed communication between mineral developers and surface owners. Many of those commenting said that communication needs to be improved.

✓ **Recommendation:** The EQC should produce an informational brochure that explains, among other things, the general and legal history of split estates, the process of mineral leasing, and the rights of the surface owner and mineral developer. It should be easy to reproduce, including being downloadable from the Internet. It should serve as an initial source for the owners of minerals and for surface owners to find more information.

✓ **Recommendation:** The brochure should be required by statute to be distributed when notice of seismic exploration activity is given as well as when the mineral developer provides notice of drilling operations to the surface owner.

⇨ **Finding:** Many surface owners said that the current 10-day minimum notice of drilling operations does not provide enough time to plan for the effects of drilling on the property. While industry representatives said that the current notice timeline works well, some noted that they often provide more than 10 days' notice.

⇨ **Finding:** Wyoming and North Dakota require 30 days' and 20 days' notice respectively.

✓ **Recommendation:** Legislation should extend the minimum notice period to 20 days and the maximum notice to 180 days. Legislation also should allow the surface owner to waive the notice requirement.

✓ **Recommendation:** Legislation should clarify that a surveyor may enter the property prior to drilling operations provided that existing law is followed, which includes a 15-day written notice, unless waived or not acknowledged. Legislation should state that the suggested 20-day minimum notice must be provided prior to any activity that disturbs the land surface.

✓ **Recommendation:** Legislation should clarify that there is an existing penalty for violating provisions of the notice requirements.

⇨ **Finding:** Current law requires that "surface users" be notified of seismic exploration operations. But the law says that "surface owners" must be notified of drilling operations. The term "surface user" is not defined in statute and could be construed to mean the owner of the land, the lessee of the land, or both. Since the name of lessees are not typically public record, while the owners are part of the record, in practice it seems that the "surface owner" is typically notified of seismic exploration operations.

⇨ **Finding:** While the surface owner needs to be notified of seismic and drilling operations, there are situations in which an employee or a lessee may be the one most affected by the operations or is the person in charge of daily decisions on the property.

✓ **Recommendation:** Legislation should change the term "surface user" in the seismic notification section of law to "surface owner" to clarify who should be given notice. Legislation also should make it the responsibility of the surface owner to notify any lessees or others who may be affected by seismic or drilling operations of the impending activity.

Study minimum provisions for surface use agreements. Elements that should be considered include road development, onsite water impoundments, and quality and disposal of produced water.

⇨ **Finding:** Industry representatives and some landowners testified that requiring surface use agreements and mandating what should be included in them infringes upon private negotiations between a surface owner and a mineral developer. They also said that such provisions could limit what could be negotiated. Others advocated that

surface use agreements be mandated and put in writing. The Subcommittee was unable to agree that written surface use agreements should be mandated in statute.

✓ **Recommendation:** The EQC should produce an informational brochure that outlines items that may be included or negotiated in a surface use agreement. Additionally, the brochure should be required by statute to be distributed when seismic exploration activity is conducted as well as when the mineral developer provides notice of drilling operations to the surface owner.

Study how to address disagreements on estimated damages.

⇨ **Finding:** Both surface owners and mineral developers said that disagreements over damages do occur, for a variety of reasons. Wyoming has a government mediation program as well as an outside organization where parties may voluntarily participate in mediation of disputes. Some states use forms of arbitration. Both Wyoming and the Bureau of Land Management allow mineral developers to post a surface bond if an agreement on damages cannot be reached. The Subcommittee finds that the efforts of outside organizations that may offer mediation services to surface owners and mineral developers might be beneficial.

✓ **Recommendation:** Legislation should clarify that the surface owner and mineral developer shall attempt to negotiate an agreement on damages.

✓ **Recommendation:** Legislation should clarify that at any point during the negotiations, the surface owner and mineral developer, upon mutual agreement, may enter into dispute resolution processes, including mediation.

***Study bonding requirements based on the type of activity*.**

⇨ **Finding:** From site tours in Havre, Sidney, and the Decker area, it is clear that conventional natural gas, oil, and coal bed methane operations have different effects on the surface. Even different types of oil drilling operations have unique surface impacts.

⇨ **Finding:** Seismic exploration requires a bond that indemnifies the owners of property against physical damages that may arise as the result of seismic exploration.

⇨ **Finding:** The Board of Oil and Gas Conservation requires bonds conditioned for performance of the duty to properly plug each dry or abandoned well.

⇨ **Finding:** In addition to operator bonds, there exist several current funding sources for remediation of sites. Those sources include the oil and gas production damage mitigation account, 82-11-161, MCA; provisions within the reclamation and development grants program, 90-2-1113(2), MCA; and the coal bed methane protection program, 76-15-905, MCA.

✓ **Recommendation:** The Subcommittee has no recommendations.

Assess current reclamation and bonding requirements for coal bed methane operations.

⇨ **Finding:** Coal bed methane wells in Montana fall under the same state reclamation and bonding regulations that cover conventional natural gas wells and oil wells.

✓ **Recommendation:** The Subcommittee has no recommendations.

Evaluate statutes for surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation.

⇨ **Finding:** Coal bed methane (CBM) operations in Montana generally fall under the same state regulations that cover conventional natural gas wells and oil wells.

⇨ **Finding:** There exist some statutes specific to coal bed methane operations, including 82-11-175, MCA, which addresses CBM wells that produce ground water and 76-15-905, MCA, which establishes the coal bed methane protection program to compensate private landowners or water right holders for damage caused by CBM development.

✓ **Recommendation:** The Subcommittee has no recommendations.

Explore approaches for balancing mineral rights and surface rights.

⇨ **Finding:** The law governing split estates in this country provides that in order for the mineral right to be recognized as an asset, there must be reasonable access to it. That means that the mineral owner must be allowed onto the surface. But the owner of the surface also has rights and is entitled to damages caused by the extraction of the mineral. The Subcommittee finds that the efforts of outside organizations that may offer mediation services to surface owners and mineral developers might be beneficial.

✓ **Recommendation:** Legislation should clarify that the surface owner and mineral developer shall attempt to negotiate damages.

✓ **Recommendation:** Legislation should note that at any point during the negotiations and upon mutual agreement, the surface owner and mineral developer may enter into dispute resolution processes, including mediation.

✓ **Recommendation:** The EQC should produce an informational brochure that explains, among other things, the general and legal history of split estates, the process of mineral leasing, and the rights of the surface owner and mineral developer. It should be easy to reproduce, including being downloadable from the Internet. It should serve as an initial source of information for the owners of minerals and for surface owners to find more information.

✓ **Recommendation:** The brochure should outline items that may be included or negotiated in a surface use agreement.

✓ **Recommendation:** The brochure should be required by statute to be distributed when notice of seismic exploration activity is given as well as when the mineral developer provides notice of drilling operations to the surface owner.

Identify the relationship between federal law and state law related to split estates.

⇨ **Finding:** In general, when the minerals are owned by the federal government, federal regulations apply. When the minerals in Montana are owned by the state or by private parties, state laws and rules apply.

✓ **Recommendation:** The EQC should produce an informational brochure that explains the difference in regulations between federal and state agencies and provides contacts to find out more information.

Evaluate necessity and feasibility of postoperation reclamation requirements or alternatives, including water pits and impoundments.

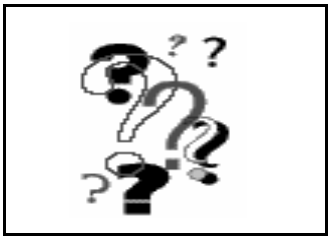
⇨ **Finding:** State law requires the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and requires necessary measures to prevent adverse hydrological effects from

the well or hole, unless the surface owner agrees with the approval of the Board of Oil and Gas Conservation, in writing, to a different plan of restoration.

⇨ **Finding:** The Montana Board of Oil and Gas Conservation considers water pits and impoundments to be regulated under this statute and the rules that enforce it.

✓ **Recommendation:** The Subcommittee has no recommendations.

The Decisionmaking Process



At its second meeting, the Subcommittee decided that recommendations to the Environmental Quality Council (EQC) would need to garner at least 8 votes out of the 12 members. While members said that they would strive to reach consensus, they also acknowledged that doing so on all matters related to what could be contentious issues may not be realistic.

The Subcommittee instructed staff to prepare a list of regulatory options to serve as a guide for Subcommittee discussion. After discussing the initial option document, the Subcommittee further instructed staff to poll individual Subcommittee members on each of the options. Those results were compiled and reviewed by Senators Wheat and McGee as they prepared the initial bill draft.

The results of the Subcommittee survey are in **Appendix Q**.

The initial bill draft was presented at the March meeting. The Subcommittee went through the draft, section by section, debating each proposed change and new language and voting on proposed changes for each section.

Only proposals winning at least 8 out of 12 votes were deemed to have passed. Those changes were incorporated into another draft for the April meeting. Again, the Subcommittee went through the draft, section by section.

The Subcommittee decided that recommendations to the EQC would need to garner at least 8 votes out of the 12 members.

At its May meeting, the Subcommittee examined the bill draft that incorporated the April changes.

The proposed bill draft contains issues that won at least 8 votes on the Subcommittee. However, the Subcommittee wanted the report to reflect other issues

that won at least half of the votes but failed to reach the supermajority needed for inclusion in the bill draft. Issues and votes are summarized below, by meeting date. Summary minutes as well as audio files of the meetings can be found at: http://leg.mt.gov/css/lepo/2005_2006/subcommittees/hb790

■ January 26, 2006

Revise 82-10-503. Implement a 5-day notice for nonsurface-disturbing activities and a minimum of 20 days' and not more than 180 days' notice for surface-disturbing activities. Parties may waive or otherwise change the notice. **Failed 7-5.**

■ March 16, 2006

Revise 82-1-107. Change term "surface user" to "surface owner". **Failed 6-5.**

In the midst of discussing a proposal that would implement a "bonding on" procedure with a minimum bond of $1,500, a maximum of $10,000, and a blanket bond provision, a motion was made to reduce the minimum bond to $500. **Failed 6-5.**

The Subcommittee passed, with a vote of **8-3,** a provision to implement a "bonding on" procedure with a minimum bond of $1,500, a maximum of $10,000 and a blanket bond provision. However, the "bonding on" provision was rejected at the April 24 meeting by a vote of **8-4.**

■ April 24, 2006

By a vote of **10-1**, the Subcommittee voted to change the term "surface user" to "surface owner" in 82-1-107. A later motion would have changed the language in the draft bill back to "surface user". **Failed 6-6.**

Revise 82-10-503 to require that the notice must include an offer by the oil and gas developer or operator to enter into negotiations with the surface owner to reach an agreement that reasonably accommodates the surface owner's use of the surface while recognizing the dominance of the mineral estate. **Failed 7-5.**

Revise 82-10-504 to provide that the surface owner and oil and gas developer or operator shall attempt to negotiate a "binding written" agreement on damages. **Failed 6-6.**

Revise 82-10-504 to require the oil and gas developer or operator to pay the surface owner a single sum payment for initial damages as well as annual payments over the period of time that the loss occurs, unless otherwise agreed to by the parties. **Failed 7-5.**

■ May 15, 2006

Revise 82-10-504 to include a provision allowing people willing to conduct dispute resolution to contact the Board of Oil and Gas Conservation and be placed on a list that would include their qualifications and fee schedules. The list must be made available to the public. **Failed 6-5.**

Revise 82-10-508 to allow a person seeking compensation for damages to require the oil and gas developer or operator to enter dispute resolution. If there are costs associated with the dispute resolution process, the expense would be split evenly between the two parties. If no agreement is reached, the person seeking damages could file an action in District Court, which may also award attorney fees for failing to comply with this section. **Failed 7-4.**

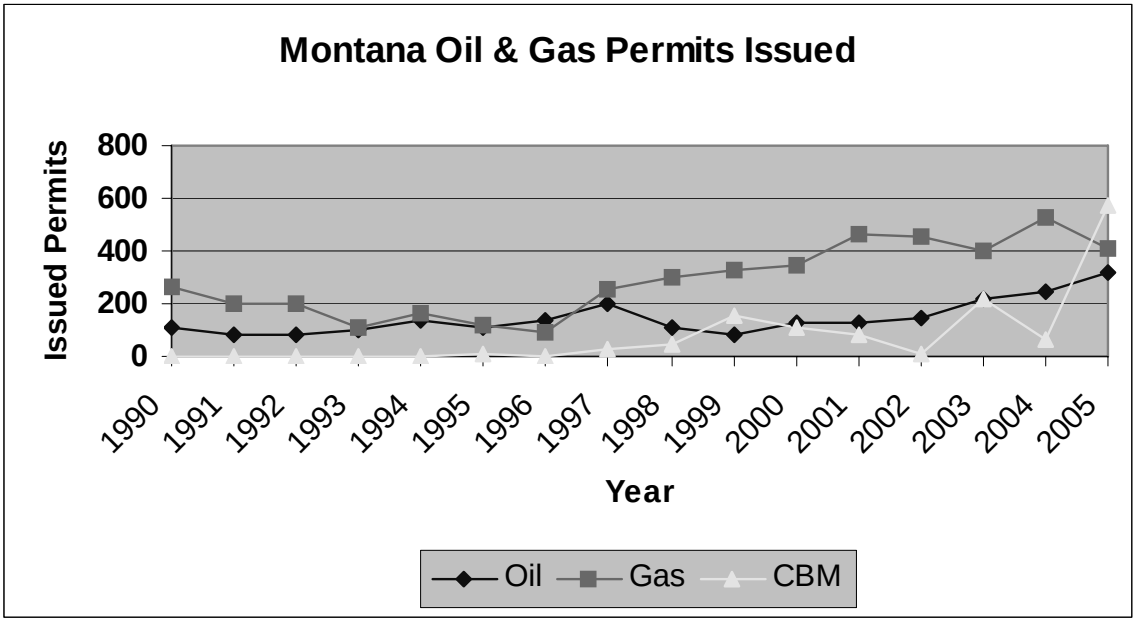
Revise 82-10-508 to provide that if a court awards a person seeking damages an amount that is greater than the highest offer of the oil and gas operator or developer, the person must be awarded reasonable attorney fees. If the amount awarded is equal to or less than the highest offer, the parties pay their own attorney fees and costs. **Failed 6-5.**

Chapter 1: Split Estate and Coal Bed Methane Issues Rise to the Fore

The early 1990s were mostly slow years for oil and gas drilling in Montana. It wasn't until 1997 that the Montana Board of Oil and Gas Conservation issued more than 400 drilling permits in a single year.

But new technologies, increasing demand, and the emergence of coal bed methane gas as an energy source have contributed to a resurgence in mineral development. Drilling for oil, conventional natural gas, and coal bed methane has increased in recent years. In 2005, the Board of Oil and Gas Conservation issued 1,305 drilling permits for those minerals.

The increased drilling activity likely played a role in the heightened awareness of split estate issues in Montana.



A split estate occurs when the right to develop oil or gas deposits has been severed from the surface lands. Therefore, one party will own the land and the right to use it

for such things as building a house or grazing cattle, but another party owns the right to develop the underlying oil or gas deposits. Sometimes, it helps to think of a plot of land as a bundle of sticks, each stick representing a property right. The right to plow or build on the surface is one stick, the right to mine or drill for minerals is another stick.

Prior to colonization of the United States, the English recognized that reserved mineral rights were an asset. The right to future development of those minerals would mean additional revenue. As land was settled in Montana and the rest of the West under numerous Homestead Acts, the government reserved the right to develop coal and other minerals. For more information about the history of split estates in Montana, please see **Appendix D**.

Courts have held that the mineral right has no value unless the oil or gas can be removed from the ground.

Because mineral rights were reserved under the Homestead Acts, the federal government is the largest owner of minerals. In Montana, the federal government owns approximately 26 million acres of surface land and more than 37 million acres of mineral rights. Approximately 11.7 million acres of federal minerals are under private surface land. The Bureau of Land Management manages all the federal minerals and approximately 8 million acres of the federal surface land in the state. The state of Montana, which also leases mineral rights, owns nearly 5 million acres of surface land and mineral rights and about 1.3 million acres of mineral rights only. Private owners may sell the surface to one party and the minerals to another, or the owner of an estate may sell the surface but retain the minerals. Between federal, state, and private ownership of either estate, there could be any combination of ownership. For more information on the distribution of federal split estate lands, please see **Appendix E**. The breakdown of state-owned split estates is contained in **Appendix F**.

Both the surface and mineral owners in a split estate have property rights. But courts have held that the mineral right has no value unless the oil or gas can be removed from the ground. That means mineral owners have the right to reasonable use of the surface, regardless of whether or not the surface owner grants permission. However, state and federal regulations further define this relationship. Many states, including Montana, have laws that regulate how surface owners are compensated for damages

to the land during mineral development. To see a comparison of these laws, please see **Appendix G.**

During the 2005 Legislature, lawmakers considered several measures dealing directly or indirectly with split estates and coal bed methane. Two of the most high-profile were Senate Bill No. 258 and Senate Bill No. 336.

Carried by Senator Mike Wheat of Bozeman, Senate Bill No. 258 would have required the developer to provide notice of upcoming drilling activity to the surface owner 45 days before commencement. Current law requires a 10-day notice. Among other things, the measure also would have required the mineral developer and the surface owner to enter into good faith negotiations to determine the compensation due the surface owner for damages to the land during development. If no agreement could be reached, the developer would have been required to post a bond.

Senate Bill No. 336, proposed by Senator Lane Larson of Billings, would have created a Coal Bed Methane Reclamation Act similar to the mining laws administered by the Department of Environmental Quality. Currently, oil and gas reclamation is under the purview of the Board of Oil and Gas Conservation.

Both measures failed. (The text of both bills can be found on the Web at: www.leg.mt.gov.)

But lawmakers, recognizing that the issues brought forth in the proposals were pertinent to Montanans, did pass House Bill No. 790. The measure was carried in the House by Representative Jim Peterson and in the Senate by Senator Glenn Roush. The law created the Split Estate/Coal Bed Methane Subcommittee of the Environmental Quality Council. The bill provided $50,000 for the Subcommittee to study many of the issues raised in the failed Senate bills.

Chapter 2:
The Interim Process

The Environmental Quality Council (EQC) is a state legislative committee created by the 1971 Montana Environmental Policy Act (MEPA). As outlined in MEPA, the EQC's purpose is to encourage conditions under which people can coexist with nature in "productive harmony". The EQC fulfills this purpose by assisting the Legislature in the development of natural resource and environmental policy, by conducting studies on related issues, and by serving in an advisory capacity to the state's natural resource programs.

The EQC is a bipartisan committee with 17 members: 6 state senators; 6 state representatives; 4 members of the public; and 1 nonvoting member who represents the Governor. The House, Senate, and public members are all chosen by the majority and minority leaders of each house. EQC members are limited to three 2-year terms.

In accordance with House Bill No. 790, the EQC appointed six members from the EQC to serve on the Subcommittee, including Senator Mike Wheat, the chair, Senator Dan McGee, the vice chair, Representative Norma Bixby and Representative Jim Peterson. Public EQC members appointed were Brian Cebull, who works for Nance Petroleum Corporation of Billings, and Doug McRae, a Forsyth-area rancher.

Those members culled through more than 70 applications from people all over Montana as well as other states in filling the remaining six at-large positions. The large number of applications foreshadowed the high interest the issue would generate in the coming months.

The EQC members of the HB 790 Subcommittee recommended, and the co-chairs of the EQC, with concurrence from the vice co-chairs, appointed: Connie Iversen, a landowner in Culbertson; Joe Owen, a Billings landman; Jim Rogers, a Colstrip landowner and supervisor for the Rosebud Conservation District; Lila Taylor, a Busby rancher and former lawmaker; Bruce Williams, a vice president for Fidelity

Exploration and Production Company based in Sheridan, Wyoming; and David Woodgerd of Stevensville, an attorney who formerly worked for the state.

Also appointed to work with the Subcommittee as nonvoting members were Representative Rick Ripley and Senator Glenn Roush.

The enacting legislation contained specific study parameters. The bill specifically requested that the following issues be studied:

1. split estates with regard to ownership of minerals and the ownership of surface property related to oil and gas development;
2. reclamation of surface property affected by coal bed methane development; and
3. bonding requirements for coal bed methane production.

HB 790 also provided that the portion of the study addressing split estates must include:

1. procedures and timelines for giving notice to surface owners;
2. minimum provisions for surface use agreements. Elements that should be considered in surface use agreements are:
   a. road development,
   b. onsite water impoundments; and
   c. the quality and disposal of produced water.
3. provisions for addressing disagreement on estimated damages between the surface owner and the mineral owner; and
4. bonding requirements, if any, based on the type of activity.

HB 790 provided that the portion of the study addressing reclamation and bonding for coal bed methane operations must include:

1. assessing current requirements for reclamation and bonding for coal bed methane operations and determining if they are adequate;
2. evaluating laws related to surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation in other states;
3. exploring alternatives and approaches for balancing mineral rights with surface rights;
4. identifying the relationship between federal law and state law with regard to split estates and jurisdiction; and
5. evaluating the necessity and feasibility of postoperation reclamation requirements or alternatives, including water pits and impoundments.

To accomplish these tasks, the Subcommittee adopted a work plan that included research, presentations, and panel discussions.

1. procedures and timelines for giving notice to surface owners
   - X Study index of related research. Staff.
   - X Summary of recent case law regarding split estates. Staff. Aug. 2005
   - X Flowchart of oil/gas permitting. Staff. Aug 2005
   - X Comparison of state surface owner laws. Staff. Sept. 2005
   - X Public testimony and agency panel discussion. Sept. 2005
   - X Outline of surface owner options. Staff. Oct. 2005
   - X Presentation of Wyoming's new split estate law. Oct. 2005
   - X MBOGC presentation on current statute, rules. Dec. 2005

2. minimum provisions for surface use agreements (elements that should be considered include road development, onsite water impoundments, and quality and disposal of produced water)
   - X Study index of related research. Staff.
   - X Comparison of state surface owner laws. Staff. Sept. 2005
   - X Examples of surface use agreements. Staff. Oct. 2005
   - X Outline of surface owner options. Staff. Oct. 2005
   - X Presentation of Wyoming's new split estate law. Oct. 2005
   - X MBOGC presentation on current statute, rules. Dec. 2005

3. address disagreement on estimated damages
   - X Study index of related research. Staff.
   - X Comparison of state surface owner laws. Staff. Sept. 2005
   - X Public testimony and agency panel discussion. Sept. 2005
   - X Outline of surface owner options. Staff. Oct. 2005
   - X Presentation on Wyoming mediation. Oct. 2005
   - X Presentation of Wyoming's new split estate law. Oct. 2005
   - X MBOGC presentation on current statute, rules. Dec. 2005

4. bonding requirements based on the type of activity
   - X Study index of related research. Staff.
   - X Comparison of state surface owner laws. Staff. Sept. 2005
   - X Public testimony and agency panel discussion. Sept. 2005
   - X Outline of surface owner options. Staff. Oct. 2005
   - X Presentation of Wyoming's new split estate law. Oct. 2005
   - X MBOGC presentation on current statute, rules. Dec. 2005

_X_ BLM policy on bonding impoundment ponds. Jan. 2006

_X_ Reclamation and bonding. DEQ, MBOGC, BLM. March 2006

5. assess current reclamation/bonding requirements for coal bed methane operations

_X_ Study index of related research. Staff.

_X_ Flowchart of oil/gas permitting. Staff. Aug 2005

_X_ Comparison of state surface owner laws. Staff. Sept. 2005

_X_ Public testimony and agency panel discussion. Sept. 2005

_X_ MBOGC presentation on current statute, rules. Dec. 2005

_X_ BLM policy on bonding impoundment ponds. Jan. 2006

6. evaluate statutes for surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation

_X_ Study index of related research. Staff.

_X_ Comparison of state surface owner laws. Staff. Sept. 2005

_X_ Public testimony and agency panel discussion. Sept. 2005

_X_ MBOGC presentation on current statute, rules. Dec. 2005

_X_ BLM policy on bonding impoundment ponds. Jan. 2006

7. explore approaches for balancing mineral rights and surface rights

_X_ Study index of related research. Staff.

_X_ Summary of recent case law regarding split estates. Staff. Aug. 2005

_X_ Flowchart of oil/gas permitting. Staff. Aug 2005

_X_ Comparison of state surface owner laws. Staff. Sept. 2005

_X_ Public testimony and agency panel discussion. Sept. 2005

_X_ Presentation on Wyoming mediation. Oct. 2005

_X_ Presentation of Wyoming's new split estate law. Oct. 2005

_X_ MBOGC presentation on current statute, rules. Dec. 2005

8. identify relationship between federal law and state law related to split estates

_X_ Study index of related research. Staff.

_X_ Summary of recent case law regarding split estates. Staff. Aug. 2005

_X_ Flowchart of oil/gas permitting. Staff. Aug. 2005

_X_ BLM policy on bonding impoundment ponds. Jan. 2006

_X_ History and current situation regarding new Wyoming law and BLM response. Staff. March 2006

_X_ Report from BLM split estate listening session. Staff. March 2006

9. evaluate necessity and feasibility of postoperation reclamation requirements or alternatives, including water pits and impoundments

- X Study index of related research. Staff.
- X Flowchart of oil/gas permitting. Staff. Aug 2005
- X Comparison of state surface owner laws. Staff. Sept. 2005
- X Public testimony and agency panel discussion. Sept. 2005
- X MBOGC presentation on current statute, rules. Dec. 2005
- X BLM policy on bonding impoundment ponds. Jan. 2006
- X Reclamation and bonding. DEQ, MBOGC, BLM. March 2006

Chapter 3: Public Involvement

From the beginning of the interim, Subcommittee members placed a high value on hearing from those who deal on a daily basis with issues outlined in the study.

The Subcommittee held meetings in Havre, Sheridan, Wyoming, and Sidney. Besides setting aside five days for those three meetings and associated site tours, Subcommittee members traveled more than 1,600 miles to attend the field hearings.

From the beginning of the interim, Subcommittee members placed a high value on hearing from those who deal on a daily basis with issues outlined in the study.

Meetings were slated for those areas because of their proximity to different types of energy development. Conventional natural gas is predominant in the Havre area, while oil is the chief product produced in Sidney. Nearly all of the state's coal bed methane activity is taking place in the area of Montana just north of Sheridan, Wyoming. Another reason for choosing Sheridan was that in 2005, Wyoming passed a split estate law and panel members wanted to hear testimony from those affected by that law.

At each of those three meetings, about 70 people attended. More than 20 people testified at each of the hearings in Havre and Sidney, while 34 stepped up to the podium in Sheridan. The testimony stretched over several hours at each meeting. While attendees were free to talk about any issues related to oil and gas development, the Subcommittee asked for specific testimony on these issues:

* Suggested procedures and timelines, if any, for operators to provide notice to surface owners of impending mineral development;

* Proposed minimum provisions, if any, for surface use agreements, including but not limited to road development, onsite water impoundments, and the disposal of produced water;

* Suggested measures, if any, for addressing disputed damage estimates between operators and surface owners; and

* Proposed bonding requirements, if any.

In addition to much public testimony, the field meetings also garnered significant attention in local newspapers, thus informing an even wider audience about the issues and the work of the Subcommittee. The Subcommittee deliberations were also covered by various media. To read stories written by newspaper reporters who attended the meetings, please see **Appendix H**.

The Subcommittee also held six meetings in Helena, taking public comment at each.

Summary minutes of all meeting of the Subcommittee as well as audio minutes of the Helena meetings are archived at:
www.leg.mt.gov/css/lepo/2005_2006/subcommittees/hb790

Chapter 4: On the Ground - Site Tours

In addition to hearing first-hand the concerns of those who deal with oil and gas development, Subcommittee members determined that it was important to see with their own eyes the way different types of drilling operations that are conducted and reclaimed.

The Subcommittee toured sites around Havre, Sheridan, and Sidney. In each case, the tours were arranged with cooperation between representatives of industry and surface owners. At each of the tours, members of the public joined the tours. Subcommittee members traversed dusty roads in buses; enduring 100-degree temperatures in Havre and below-zero weather in Sidney.

Led by landowner Daryl Sather and representatives of Klabzuba Oil and Gas, the Subcommittee saw several aspects of natural gas production in the Havre area, including compressor stations and a water impoundment pit. The tour was put together by Klabzuba and the Montana Land and Mineral Owners Association.

Photos by Cynthia Peterson

At far left, Subcommittee members and tour participants talk near a natural gas compressor station outside of Havre. At near left, an impoundment pond at the compressor station site.

During the trip to Sheridan, the Subcommittee toured coal bed methane sites around Decker, Montana. The group spent most of the day viewing a reclaimed coal bed methane impoundment pond, a water treatment facility, and a managed irrigation project. Those involved in the tour included Fidelity Exploration & Production Company, Pinnacle Exploration, and the Northern Plains Resource Council.



Photos by Cynthia Peterson

At left, tour participants stand in a reclaimed coal bed methane impoundment pond in Southeastern Montana. At center, is a Northern Wyoming containment pond used to store produced water during the winter. The water will be used for managed irrigation in the summer. At right, a presentation on CBM water treatment is made at a Montana water treatment plant.

Photos courtesy of Nance Petroleum

Around the Sidney area, Subcommittee members saw several aspects of the latest oil activity. The group visited a site similar to that pictured in the photo on the left where a company is recovering oil by hydraulic fracturing, a process where a liquid, usually water, is mixed with sand and pumped down the well at a high pressure. The new fracture, which can extend several hundred feet from the well, connects preexisting fractures and maximizes the flow of oil.

The drilling rig pictured in the photo on the right was at a new site when the group visited. The tour also stopped at reclaimed locations where production facilities had been installed.

Nance Petroleum and the Northeastern Montana Land and Mineral Association coordinated the tour.

Staff also provided the members with maps showing current wells as well as abandoned wells in selected Eastern Montana counties. The maps are included in **Appendix I**.

Chapter 5: Research & Presentations

Research

There are numerous statutes that apply to oil and gas development in the state. Federal regulations also sometimes apply.

Much of the regulation of the oil and gas industry in Montana is the responsibility of the Board of Oil and Gas Conservation (MBOGC), which is attached to the Department of Natural Resources and Conservation. The Board was created in 1953 and renamed in 1971. Its duties are detailed in Title 82, chapter 11, of the MCA. The statutes are implemented in Title 36, chapter 22, of the Administrative Rules of Montana.

The seven-member Board, which is appointed by the Governor, must consist of three representatives of the oil and gas industry with at least 3 years of experience in the production of oil and gas and two members who are landowners who reside in oil or gas producing counties of the state but who are not actively associated with the oil and gas industry. One of the landowners must own the mineral rights with the surface and the other must be a landowner who does not own the mineral rights. One member must be an attorney licensed to practice in Montana.

The Board's duties include issuing drilling permits; establishing well spacing units and land pooling orders; inspecting drilling, production, and seismic operations; investigating complaints; conducting engineering studies; and collecting and maintaining well data and production information. The Board also administers the federal Underground Injection Control Program for Class II injection or disposal wells under the Safe Drinking Water Act.

The Board oversees most operations on state and private lands that may have state or private minerals underneath. In areas where the federal government owns and leases the minerals, the U.S. Bureau of Land Management (BLM) is the lead agency.

Since 1987, the MBOGC and the BLM have been coordinating their decisions on drilling permits. Under an agreement, the MBOGC accepts BLM approval of drilling permits for federal minerals in Montana.

The Montana Department of Environmental Quality (DEQ) also plays a role in the regulation of oil and gas operations. The agency implements laws related to water and air quality as well as management of waste.

Since the DEQ is delegated the responsibility for administering some federal environmental laws, such as the Clean Water Act and the Clean Air Act, the agency is involved in operations where the federal minerals are leased.

Attached to the DEQ is the Board of Environmental Review. The Board consists of seven members appointed by the Governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise or background as a county health officer or as a medical doctor. One member must be an attorney licensed to practice in Montana.

The Board of Environmental Review adopts rules and standards for how the DEQ carries out the intent of the law. For example, state statute gives the Board the authority to adopt rules “governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems”.

On Tribal lands, the Bureau of Indian Affairs and the Environmental Protection Agency assume some of the duties of the BLM and the DEQ, respectively.

To illustrate the various laws and regulations that apply to oil and gas operations, staff prepared two flowcharts. One shows the state permitting process; the other shows the federal permitting process. The charts are contained in **Appendix J**.

The Subcommittee largely focused on Montana’s surface owner damage and disruption compensation statutes, Title 82, chapter 10, part 5, MCA. As part of the

evaluation of those laws, the Subcommittee reviewed similar laws in other states. Please refer to **Appendix G** for key parts of those laws.

Presentations

Many of the Subcommittee meetings included presentations scheduled by the Subcommittee as well as impromptu presentations during the extensive public comment periods. Following are brief summaries of those presentations solicited by the Subcommittee. Many presenters also answered multiple questions from the Subcommittee. Those responses, summaries of all presentations, as well as audio recordings for those made in Helena are available on the Subcommittee's website: www.leg.mt.gov/css/lepo/2005_2006/subcommittees/hb790

■ September 15, 2005 (Helena)

Jeanie Alderson, an eastern Montana rancher and member of Northern Plains Resource Council, said that the 10-day notice requirement is too short and should be modified to 1 year. She also said that landowners should be included in all leasing decisions before development occurs, landowners should be notified when their minerals are leased, and arbitration should be utilized in the event that damages are incurred by the landowner. Ms. Alderson suggested that a bond be implemented to protect surface owners in the event that a company disappears and leaves the landowner with substantial damages.

Wayne Ransbottom, Land Manager for Fidelity Exploration and Production Company of Sheridan, Wyoming, said that Fidelity tries to begin negotiations at least 8 months in advance of any proposed development. He explained the negotiation procedure used by Fidelity to identify and address landowners' special needs prior to development. Mr. Ransbottom explained the need for repeated access to land prior to submitting a development plan. When a plan of development is submitted to the BLM prior to development, he said that is another opportunity for the surface owner to interject with objections or concerns. He added that careful planning with the surface owner can minimize surface impacts.

Senator Keith Bales, a surface and mineral owner, said that surface use agreements have changed over the years, which makes him skeptical about putting into law what should be included in a surface use agreement. Senator Bales said that if a surface

use agreement listed what damages landowners could be paid for, landowners would be severely limited. He said that the Subcommittee should not recommend a law that would limit his potential as a landowner. Senator Bales believed that a 30-day notification period would be ample, but he was uncertain about the need to extend the notification period. He said that bonding should be used only as a last resort and identified other sources of funding that could be used for reclamation of coal bed methane operations. He said that laws passed in Montana in the 1970s resulted in a coal boom for Wyoming. He believes Montana should be developing its natural resources.

Ray Muggli, a land and mineral owner in southeastern Montana and a member of the Northern Plains Resource Council, said that he is concerned about the magnitude of coal bed methane development and the resulting damage to the surface, especially containment ponds and the sodium content of the water. He said that Montana should find a better way to manage the water and soil in the Tongue River Valley. He said that the 10-day notice requirement is inadequate.

Will Lambert of the Bureau of Land Management provided background information on BLM duties. He said that in most cases, agreements between landowners and oil and gas companies are reached and his experience indicates that there have been very few conflicts between landowners and oil and gas producers. He said that the BLM's notification period is, at a minimum, 30 days due to the BLM's posting requirements. Mr. Lambert said that the BLM includes the landowner in its decisions. In addition, BLM requires bonding to cover noncompliance, plugging of wells, nonpayment of royalties, and reclamation. The bonding has a minimum amount of $1,000, and the amount is determined by the level of risk. Mr. Lambert referred to a U.S. Department of Interior memorandum that sets forth BLM's process. This can be found in **Appendix K**.

Monte Mason, the Minerals Management Bureau Chief, Montana Department of Natural Resources and Conservation (DNRC), gave an overview of DNRC's process of leasing minerals. Mr. Mason said that surface owners are able to bid on leases in the public process and successful landowners are obligated to diligently develop the minerals. DNRC does not hold separate bonding on its leases. Mr. Mason said that landowners are entitled to compensation for damages and that the lessee must repair, replace, or compensate for any damages. In addition, lessees must provide confirmation that they have met with the surface owner and have reached an

agreement. If the lessee has made a good faith effort to reach an agreement with the surface owner, the DNRC may authorize the lessee to proceed. He said that arbitration is also an element of state land leases. More information about how DNRC handles mineral leases is contained in **Appendix L**.

Greg Petesch, Chief Legislative Attorney, addressed the "accommodation doctrine" and Model Surface Use and Mineral Development Accommodation Act. Mr. Petesch provided a history of the drafting committee that wrote the Act, which codifies the accommodation doctrine that was developed through common law and case law. Mr. Petesch said that the right to develop the mineral estate overrides the surface estate, carries with it implied easements of access, and requires the mineral plan to accommodate surface uses. Whenever state land is sold, the state is required to reserve the mineral rights; therefore, a split estate is created whenever the state sells land. The text and an explanation of the Act are contained in **Appendix M**.

■ September 16, 2005 (EQC meeting)

Jim Halvorson, Petroleum Geologist, Montana Board of Oil and Gas Conservation (MBOGC), reviewed well permitting requirements and processes, including what is required when submitting a permit and the analysis to which a permit application is subjected. An outline of the process is contained in **Appendix N**.

Will Lambert of the Bureau of Land Management (BLM) explained the BLM's permitting process and bonding. The operator submits a complete Application for Permit to Drill (APD) that includes evidence of bond, a survey plat, a drilling plan, a surface use plan, interim reclamation and final reclamation plans, and a water management plan. For split estates, the operator is required to submit certification that an agreement has been reached with the landowner. APDs are posted for a minimum of 30 days. The BLM is required to comply with the National Environmental Policy Act. For coal bed methane development, the BLM works with the MBOGC and DEQ to do a joint environmental analysis. The environmental analysis results in conditions of approval for a permit to drill, which become attached to the APD and are subject to enforcement. He said that his agency's goal is to issue APDs within 35 days, although the coal bed methane process takes at least 4 months. The BLM utilizes lease bonds for $10,000, statewide bonds for $50,000, and nationwide bonds for $150,000, and BLM has authority to raise bond amounts if it determines that an operator is an at-risk operator. BLM has not experienced any defaults on bonds in

Montana in the past 6 years. For split estates, the BLM requires operators to enter into good faith negotiations with landowners and, in the majority of cases, this is achieved. If an agreement cannot be reached with the landowner, the operator is required to post a minimum $1,000 bond, which will be used for damages to crops and tangible improvements. The landowner has the right to protest the bond amount set by BLM.

Tom Reid, Supervisor of Water Quality Permitting, Montana Department of Environmental Quality, discussed regulation of pollutants discharged to state waters.

Jack Stults, Division Administrator, Water Management, Montana Department of Natural Resources and Conservation, addressed coal bed methane (CBM) development and how it affects water rights. He said that CBM discharge is a byproduct and not a beneficial use of water. He said that in the Powder River Basin Controlled Groundwater Area, the water byproduct of CBM does not inherently create or require a water right. The Controlled Groundwater Area requires all producers to offer a mitigation agreement to every water right within 1 mile of any CBM well. This shifts the burden of proof to the producer if a well is impacted. If a well is impacted, the 1-mile requirement expands out from the impacted well.

■ October 27, 2005 (Sheridan, Wyoming)

Representative Rosie Berger of Big Horn, Wyoming, explained how she pursued legislation to address split estates. She said that producers are now doing more planning since the new legislation acts as a hammer and requires that surface owners be included in planning. But she added that the law may need to be tweaked. Representative Berger identified competition among developers as an unintended consequence of the legislation. Mediation is included as part of the surface use agreement, which is a private contract between the landowner and the developer. She said that it is too early to know whether the legislation was effective.

Laurie Goodman of the Landowners Association of Wyoming said that her organization was formed to pass Wyoming's legislation and to focus on the legal aspects of the legislation. She said that the legislation contained a 30-day notice requirement, but it had been suggested that landowners need a minimum of 6-months' notice. Ms. Goodman said that well spacing should be required to be disclosed since well spacing directly impacts the land. She advised the Subcommittee

to avoid mandating what the surface use agreement should look like and to leave those decisions up to the landowner. Ms. Goodman emphasized the importance of "lost land value" language and explained how landowners can be impacted for more acreage, depending upon the land use. Loss should include commercial, agricultural, and lost land values. Wyoming's legislation did not contain any damage appraisal language. She discouraged lengthy bonding provisions and said that waivers are important in cases where landowners are satisfied with their current situation. She said that she would have liked to strengthen the provisions for water management and water protection.

Lucy Hanson, the coordinator for the Wyoming Agriculture and Natural Resource Mediation Program, explained the state's mediation program and how it relates to the Wyoming Split Estate Initiative. She suggested that the Subcommittee would need to consider which entity would take the initial request for mediation and act as the coordinator.

■ December 9, 2005 (Sidney)

Dennis Guenther of Nance Petroleum said that the company provides notice at least 10 days before staking a well and, if asked by the surface owner, will contact any lessee. The 10-day notice gives the operator flexibility, he said, in the case of rigs becoming available on short notice, spring rains preventing access to a location, or an unexpected dry hole. Having a rig on standby is expensive, he added. In regards to bonding, he said that the state bond is already in place, the operator is liable for any damages not included in the agreement, and the agreement covers damages. In more than 25 years of business, he said that he has always reached agreements with surface owners.

Dennis Trudell of the Northeastern Montana Land & Mineral Association said that the current law needs "teeth" and a longer notification period. He said that annual rental fees would protect the landowner and provide fair compensation for the inconvenience, disruption, and damages that the landowner experiences. Landowners do not pursue the annual rental amount now since it would necessitate hiring an attorney.

Tom Richmond, Administrator of the Montana Board of Oil and Gas Conservation, explained some aspects of current law in Montana and other states and suggested

how changes might be made if the Subcommittee chooses to support legislation. Mr. Richmond did not advocate changes, but his comments included:

• Current law says notice of drilling operations must be given to the surface owner at least 10 days and not more than 90 days before commencement. Mr. Richmond said that it could be changed to 20 days and 180 days.

• Providing notice to surface owners when minerals are leased could prove difficult, Mr. Richmond said, because a single tract could have more than 30 mineral owners.

• Mr. Richmond said that Montana law, which now implies that there must be a surface damage agreement, could be made clearer. He said that the question of state involvement in a private agreement is a difficult one, but added that some key elements to be included in agreements could be outlined in statute.

• Wyoming mandates a $2,000 surface bond if the landowner and the mineral developer cannot reach a damage agreement. Mr. Richmond said that such a requirement could be contested in court. But he added that if Montana adopts that kind of law, it should be very specific about who would hold the bond. On other bonding issues, Mr. Richmond said that the Subcommittee should consider the comprehensiveness of current rules, adding that there have been very few orphaned wells—those abandoned by the developer—since 1980.

• Laws in Montana, Wyoming, and North Dakota generally do not separate coal bed methane development from traditional oil and gas regulations, Mr. Richmond said, adding that doing so could make regulation more difficult.

More information on current split estate laws, the regulation of coal bed methane development, active wells, and orphaned wells is contained in **Appendix O**.

■ January 26, 2006 (Helena)

Dave Galt of the Montana Petroleum Association (MPA) said that oil and gas operations in Montana vary in size and in other aspects. He said that the current law has been reviewed and serves both surface owners and the industry well. Mr. Galt said that the MPA is working with the Farm Bureau and others on an informational document to assist surface owners in working with oil and gas operators.

Bob Fisher of Ballard Petroleum Holdings in Billings said that the current notification period works and is fair. Generally, he said, surface owners are contacted a considerable time before drilling operations. Extending the notification period, he

said, would allow those who do not want the development on their land to use the notification to delay the process.

Mark Carter of Encore Acquisition Company said that drilling schedules can change based on drilling results. He added that surface agreements set minimum standards. Mr. Carter said that the mineral owner has the right and needs the ability to develop minerals without unnecessary delays. Changing the law would deter drilling in Montana, he said, thereby lowering tax revenues, decreasing the number of high paying jobs, and creating undue litigation.

Todd Ennenga of Devon Energy Corporation said that mandating surface agreements and the language in them would erode good will between surface owners and mineral developers. He said that the 10-day notice is adequate, especially considering such things as changes in weather and the availability of drilling rigs. He said that a waiver should be included so the operator can enter property for certain emergencies. Mr. Ennenga also said that a brochure should be created that spells out the rights of both parties and can be widely distributed.

Colby Branch, a natural resource attorney with the Crowley Law Firm in Billings, said that the Subcommittee should not recommend any changes to the current statute. He said that legislation that reallocates the rights of the surface owners and the mineral owners would rewrite thousands of deeds and oil and gas leases. He said that the Supreme Court determined statutes must serve a public, not private, interest, and the state should not get involved in a private contract between two parties. Mr. Branch said that the 10-day notice is sufficient, the current law provides adequate compensation for damages, and the courts can be used to resolve damage disputes. He said that legislation would not affect federally reserved minerals managed by the BLM since they are governed by federal law.

Patrick Montalban of Altamont Oil and Gas referred to a letter he sent to the Subcommittee that suggested the 10-day notice could be changed to 15 days and recommended that a committee be established under the Montana Board of Oil and Gas Conservation that can adjudicate disputes between the surface owner and mineral developer.

■ March 16, 2006 (Helena)

Tom Richmond of the Montana Board of Oil and Gas Conservation discussed current bonding laws and rules. Mr. Richmond made the distinction between reclamation bonds and the use of those bonds to restore the surface, and "bonding on", which is used to pay the landowner for damages.

Jim Albano, the lead minerals specialist for the Bureau of Land Management (BLM) in Billings said that an oil and gas lessee or operator must have a bond before disturbing the surface for drilling operations. The BLM can increase the amount of the bond if it is determined that the operator has an increased level of risk. The bond can be also be increased if 5 years previous to a drilling proposal, a demand was made on a bond for plugging and reclaiming land. In reference to split estates, Mr. Albano said that a good faith effort needs to be undertaken by the mineral lessee to either negotiate a surface agreement or obtain a waiver from the surface owner. Mr. Albano explained that "bonding on" is required if no agreement between the surface owner and operator is reached. The purpose of the bond is to ensure compensatory protection for the surface owner. Mr. Albano said that the BLM didn't use "bonding on" until 2004. He added there is always a possibility that an agreement can be reached any time in the process, which would necessitate termination of the bond. A flowchart of the "bonding on" process, documents explaining bonding for CBM impoundment ponds in Wyoming, and a BLM-produced brochure on mineral development in split estate situations are contained in **Appendix P**.

Steve Welch of the Department of Environmental Quality provided an overview of how the agency bonds for various mining activities as well as solid and hazardous waste management. What the bonding for all areas has in common, he said, is that the bond must be sufficient for a third party to perform work to specific standards. He discussed coal and uranium prospecting bonding and the U.S. Department of the Interior Office of Surface Mining's Handbook for Calculation of Reclamation Bond Amounts.

HOUSE BILL NO. 790

INTRODUCED BY PETERSON, ROUSH, LARSON, MATTHEWS, WANZENRIED, TESTER, GEBHARDT, BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT A STUDY ON SPLIT ESTATES OF PROPERTY BETWEEN MINERAL OWNERS AND SURFACE OWNERS RELATED TO OIL AND GAS DEVELOPMENT AND COAL BED METHANE RECLAMATION AND BONDING; PROVIDING FOR A SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY COUNCIL; PROVIDING THAT THE SUBCOMMITTEE ~~MAY~~ SHALL, IF APPROPRIATE, SEPARATE THE STUDY INTO TWO STUDIES ~~IF IT DETERMINES THAT IT IS NECESSARY~~; PROVIDING FOR AT-LARGE MEMBERS ON THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 5-5-211 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Interim study on split estates of mineral owners and surface owners related to oil and gas development and coal bed methane reclamation and bonding.** (1) The environmental quality council provided for in Title 5, chapter 16, shall conduct an interim study on:

(a) split estates with regard to the ownership of minerals and the ownership of surface property related to oil and gas development;

(b) reclamation of surface property affected by coal bed methane development; and

(c) bonding requirements for coal bed methane production.

(2) (a) The environmental quality council shall establish a subcommittee to conduct the study and report back to the full council. The subcommittee members must be appointed by the chair of the environmental quality council with concurrence of the vice chair. The subcommittee must include:

(i) ~~two members from the house of representatives who are members of the environmental quality council and are from different political parties;~~

~~(ii) a public member who is a member of the environmental quality council and was appointed by the speaker of the house;~~

~~(iii) two members from the senate who are members of the environmental quality council and are from~~

~~different political parties;~~

~~(iv) a public member who is a member of the environmental quality council and was appointed by the president of the senate~~ FOUR MEMBERS, TWO FROM EACH POLITICAL PARTY, WHO ARE LEGISLATORS APPOINTED TO THE ENVIRONMENTAL QUALITY COUNCIL;

(II) TWO MEMBERS WHO ARE PUBLIC MEMBERS OF THE ENVIRONMENTAL QUALITY COUNCIL; and

~~(v) four~~ (III) SIX at-large members who may be members of the legislature or the public and who are not currently serving on the environmental quality council.

(b) All of the members of the subcommittee have voting privileges on issues taken up by the subcommittee. The ~~four~~ SIX at-large members provided for in subsection ~~(2)(a)(v)~~ (2)(A)(III) do not have voting privileges on the full environmental quality council. Any final recommendations and other work products that will be represented as being produced or endorsed by the environmental quality council must be finally approved by the environmental quality council.

(c) The at-large members provided for in subsection ~~(2)(a)(v)~~ (2)(A)(III) are entitled to the same compensation allowed for other members of the environmental quality council.

(3) The portion of the study addressing split estates must include but is not limited to:

(a) procedures and timelines for giving notice to surface owners;

(b) minimum provisions for surface use agreements;

(c) elements that ~~must~~ SHOULD be considered in surface use agreements, INCLUDING BUT NOT LIMITED TO ROAD DEVELOPMENT ~~AND DUST MITIGATION~~, ONSITE WATER IMPOUNDMENTS, AND THE QUALITY AND DISPOSAL OF PRODUCED WATER~~, AND ONSITE WATER IMPOUNDMENTS~~;

(d) provisions for addressing disagreement on estimated damages between the surface owner and the mineral owner; and

(e) bonding requirements, if any, based on the type of activity.

(4) The portion of the study specifically addressing reclamation and bonding for coal bed methane operations must include but is not limited to:

(a) assessing current requirements for reclamation and bonding for coal bed methane operations and determining if they are adequate;

(b) evaluating laws related to surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation in other states;

(c) exploring alternatives and approaches for balancing mineral rights with surface rights;

(d) identifying the relationship between federal law and state law with regard to split estates and jurisdiction; and

(e) evaluating the necessity and feasibility of postoperation reclamation requirements or alternatives, including water pits and impoundments ~~AND EFFECTS ON DOWNSTREAM WATER USERS~~.

(5) The subcommittee ~~may~~ SHALL, IF APPROPRIATE, divide the issues into two separate studies ~~if it determines that the issues involved in this section would be better addressed in that format~~.

(6) The environmental quality council shall complete the study by September 15, 2006, and report to the 60th legislature on its findings and recommendations, including any recommendations for legislation.

Section 2. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of interim committees. (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to subsection (5)(b), the composition of each interim committee must be as follows:

(i) four members of the house, no more than two of whom may be of one political party; and

(ii) four members of the senate, no more than two of whom may be of one political party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from each political party.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee or the environmental quality council may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state

or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."

Section 3. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) ~~The~~ (A) EXCEPT AS PROVIDED IN SUBSECTION (2)(B), THE amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(B) IN THE 2007 BIENNIUM, UP TO $50,000 MAY BE ALLOCATED TO THE LEGISLATIVE SERVICES DIVISION FOR THE PURPOSE OF A STUDY OF SPLIT ESTATES OF PROPERTY BETWEEN MINERAL OWNERS AND SURFACE OWNERS RELATED TO OIL AND GAS DEVELOPMENT AND COAL BED METHANE RECLAMATION AND BONDING.

(3) (a) For ~~tax year 2003 and succeeding~~ each tax ~~years~~ year, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	~~2003~~	~~2004~~	2005	2006 and succeeding tax years
Big Horn	~~45.03%~~	~~45.04%~~	45.04%	45.05%
Blaine	~~57.56%~~	~~57.84%~~	58.11%	58.39%
Carbon	~~50.24%~~	~~49.59%~~	48.93%	48.27%
Chouteau	~~56.67%~~	~~57.16%~~	57.65%	58.14%
Custer	~~103.63%~~	~~92.27%~~	80.9%	69.53%

Daniels	~~48.31%~~	~~49.15%~~	49.98%	50.81%
Dawson	~~56.32%~~	~~53.48%~~	50.64%	47.79%
Fallon	~~39.89%~~	~~40.52%~~	41.15%	41.78%
Fergus	~~112.2%~~	~~97.86%~~	83.52%	69.18%
Garfield	~~54.51%~~	~~51.66%~~	48.81%	45.96%
Glacier	~~76.56%~~	~~70.65%~~	64.74%	58.83%
Golden Valley	~~55.5%~~	~~56.45%~~	57.41%	58.37%
Hill	~~66.97%~~	~~66.15%~~	65.33%	64.51%
Liberty	~~63.32%~~	~~61.53%~~	59.73%	57.94%
McCone	~~58.75%~~	~~55.81%~~	52.86%	49.92%
Musselshell	~~57.06%~~	~~54.25%~~	51.44%	48.64%
Petroleum	~~67.8%~~	~~61.21%~~	54.62%	48.04%
Phillips	~~53.3%~~	~~53.54%~~	53.78%	54.02%
Pondera	~~104.14%~~	~~87.51%~~	70.89%	54.26%
Powder River	~~64.7%~~	~~63.44%~~	62.17%	60.9%
Prairie	~~38.43%~~	~~39.08%~~	39.73%	40.38%
Richland	~~45.23%~~	~~45.97%~~	46.72%	47.47%
Roosevelt	~~46.75%~~	~~46.4%~~	46.06%	45.71%
Rosebud	~~37.41%~~	~~38.05%~~	38.69%	39.33%
Sheridan	~~46.64%~~	~~47.09%~~	47.54%	47.99%
Stillwater	~~56.05%~~	~~55.2%~~	54.35%	53.51%
Sweet Grass	~~58.23%~~	~~59.24%~~	60.24%	61.24%
Teton	~~53.01%~~	~~50.71%~~	48.4%	46.1%
Toole	~~56.2%~~	~~56.67%~~	57.14%	57.61%
Valley	~~59.82%~~	~~57.02%~~	54.22%	51.43%
Wibaux	~~47.71%~~	~~48.19%~~	48.68%	49.16%
Yellowstone	~~50.69%~~	~~49.37%~~	48.06%	46.74%
All other counties	~~50.15%~~	~~50.15%~~	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

~~(a) for the fiscal year ending June 30, 2003, to be distributed as follows:~~

~~(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and~~

~~(ii) all remaining proceeds to the state general fund;~~

~~(b)~~(a) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423;

~~(v) for fiscal year 2006, $50,000 $25,000 to the legislative services division for use by the environmental quality council to conduct a split estates and coal bed methane study as provided in [section 1];~~ and

~~(v)~~~~(vi)~~(v) all remaining proceeds to the state general fund;

~~(c)~~(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund."

NEW SECTION. **Section 4. Appropriation.** The ~~$50,000~~ ~~$25,000~~ $50,000 allocated to the legislative services division ~~for use by the environmental quality council~~ in 15-36-331 is appropriated to the legislative services division FROM THE STATE SPECIAL REVENUE FUND for use by the environmental quality council for the purposes provided in [section 1].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Termination.** [Section 3] terminates September 15, 2006.

- END -

**** Bill No. ****

Introduced By **********

By Request of the *********

A Bill for an Act entitled: "An Act revising laws governing oil and gas operations; requiring a seismic activity permitholder to furnish information to a surface owner; requiring an oil or gas developer or operator to provide information to a surface owner; requiring the surface owner to provide information; increasing the time periods for notice of drilling operations; clarifying that a surface owner and oil and gas developer or operator may use dispute resolution processes; clarifying the penalty for violating notice requirements; amending sections 82-1-107, 82-10-503, 82-10-504, and 82-10-505, MCA; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-107, MCA, is amended to read:

"82-1-107. Permitholder to furnish information to surface ~~user~~ owner. (1) Before commencing seismic activity, the person, firm, or corporation shall notify the surface ~~user~~ owner, as defined under 82-10-502, as to the approximate time schedule of the planned activity~~, and upon~~ and shall provide copies of Title 82, chapter 10, part 5, this part, and, if available, a current publication produced by the environmental quality council entitled A Guide to Split Estates in Oil and Gas Development.

Upon request, the following information ~~shall~~ must also be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) the name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ the self-insurance;

(d) the number of the bond required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place;

(f) the anticipated need, if any, to obtain water from the surface ~~user~~ owner during planned seismic activity.

(2) The surface ~~user~~ owner is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained.

(3) The surface owner is responsible for providing the name and address of the permitholder to any lessees, tenants, or other parties responsible for surface operations on the property."

{*Internal References to 82-1-107: None.*}

Section 2. Section 82-10-503, MCA, is amended to read:

"82-10-503. Notice of drilling operations. (1) In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas

developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that ~~he~~ the oil and gas developer or operator plans to undertake. ~~This~~ The notice ~~shall~~ must be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. The notice must include a copy of this part and, if available, a current publication produced by the environmental quality council entitled A Guide to Split Estates in Oil and Gas Development. ~~This~~ The notice ~~shall~~ must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice ~~shall~~ must be given no more than ~~90~~ 180 days and no fewer than ~~10~~ 20 days before ~~commencement of any activity on~~ any activity that disturbs the land surface. The surface owner may waive the notice requirement.

(2) The surface owner is responsible for providing the name and address of the oil and gas developer or operator to any lessees, tenants, or other parties responsible for surface operations on the property.

(3) Prior to the oil and gas developer or operator providing the notice required in subsection (1), a person qualified under 70-16-111 may enter the land to investigate and use boundary evidence and perform boundary, well site location, and access road surveys, provided that the notice requirements of 70-16-111 are met. However, the oil and gas developer or operator shall

provide the notice required pursuant to subsection (1) prior to any activity that disturbs the land surface."

{*Internal References to 82-10-503: 82-11-122x*}

Section 3. Section 82-10-504, MCA, is amended to read:

"82-10-504. Surface damage and disruption payments -- dispute resolution -- penalty for late payment. (1) (a) The oil and gas developer or operator and the surface owner shall attempt to negotiate an agreement on damages. The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by ~~drilling~~ oil and gas operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration ~~shall~~ must be given to the period of time during which the loss occurs.

(c) At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation.

~~(c)~~ (d) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner ~~shall~~ must be compensated by a single sum payment for harm caused

by exploration only.

~~(d)~~ (e) The payments contemplated by this subsection (1) may ~~only~~ cover only land directly affected by ~~drilling~~ oil and gas operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption~~.~~ ~~no~~ A person may not reserve or assign ~~that~~ damage and disruption compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

{*Internal References to 82-10-504: None.*}

Section 4. Section 82-10-505, MCA, is amended to read:

"82-10-505. Liability for damages to property. The oil and gas developer or operator is responsible for all damages to real or personal property~~, real or personal,~~ resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to ~~property,~~ real or personal~~,~~ property caused by ~~drilling~~ oil and gas operations and production."

{*Internal References to 82-10-505: None.*}

NEW SECTION. **Section 5. Penalty for notice violation.**

Failure to comply with the notice requirements of 82-10-503 subjects the oil and gas developer or operator to the provisions of 82-11-122 and 82-11-147 through 82-11-149.

NEW SECTION. **Section 6. {standard} Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to [section 5].

NEW SECTION. **Section 7. Applicability.** [This act] applies to proceedings begun after October 1, 2007.

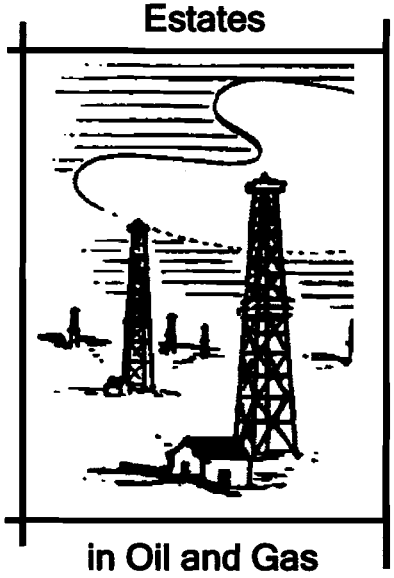
- END -

{Name : Joe P. Kolman
Title : Research Analyst
Agency: LSD
Phone : 444-9280
E-Mail: jkolman@mt.gov}

To:

From:

A Guide to Split Estates



in Oil and Gas Development

What is a split estate?

A split estate occurs when the right to develop oil or gas deposits is severed from the surface. Therefore, one party may own the right to farm the land, build a house, or graze cattle, but another party owns the right to drill for the underlying oil or gas.

How does an estate become split?

Governments around the world have long recognized the importance of reserving mineral rights when giving away or selling land - maintaining the option of developing minerals could mean cash in the future. As land was settled in Montana and the rest of the West under numerous Homestead Acts, the federal government reserved the rights to develop coal and other minerals.

Who owns what?

In Montana, the federal Bureau of Land Management as well as the state of Montana are large land and mineral owners. But many minerals also are owned privately. Between federal, state and private ownership of either estate, there could be any combination of ownership. Private owners may sell the surface to one party and the minerals to another. Or, the owner of an estate may sell the surface but retain the minerals. In the case of minerals, it is worth noting that under a piece of land, different parties may own rights to different minerals. For example, one party may own the right to develop the coal, while another may hold the rights to the oil and gas.

Where are the mineral ownership records?

The deed to the property is a good place to start. For surface owners, if the deed says ownership of the property is fee simple or fee simple absolute that means the surface and minerals rights are intact unless otherwise indicated in the chain of title. If a personal copy of the deed isn't available, the information is most likely on file with the Clerk and Recorder for the county in which the land is located. A legal description of the land would be helpful in finding mineral deeds, grants or reservations.

If initial searches are unsuccessful, some title companies or **landmen** may be able to assist for a fee. Make sure the company will provide mineral rights in the title search.

What about mineral leasing?

Mineral owners often lease minerals to an oil and gas developer. To find out if minerals are leased, contact the mineral owners if they are known. Mineral leases are usually on file with the Clerk and Recorder for the county in which the land is located. State-owned minerals are administered and leased by the Minerals Management Bureau of the Department of Natural Resources and Conservation. For more information, or to be placed on a mailing list for mineral sales, call 406-444-2074.

Federally-owned minerals are administered and leased by the BLM. The Montana web site for the agency is http://www.mt.blm.gov. The site contains information on current and historical sales as well as regulations.

What about partial mineral ownership and pooling?

In some cases, more than one party may own minerals under a parcel of land. Even if some of the mineral owners do not want to drill, Montana law allows that the mineral interests may be still be developed. See Title 82, chapter 11, part 2 of the MCA or call the Board of Oil and Gas Conservation for more information.

Who can do what?

Both the surface and mineral owners in a split estate have property rights. But courts have held that the mineral right has no value unless the oil or gas can be removed from the ground. That means mineral owners have the right to reasonable use of the surface, regardless of whether or not the surface owner grants permission. However, state and federal regulations further define this relationship. Surface and mineral owners are encouraged to open a line of communication as soon as possible to discuss plans and needs. This can happen before drilling is planned. If the surface owner leases the land to another party, the surface owner is encouraged to include the lessee, or any others who may have an interest in the surface use, in discussions about the use of the property.

What happens with exploration? Most exploration is done with seismic equipment that tests for the presence of oil or gas by measuring shock waves. Surface damage is usually minimal.	
The exploration firm shall:	* Apply for a permit from the local County Clerk and Recorder * Notify the surface owner when exploration will occur.
The surface owner shall:	* Provide the exploration firm with the name and address of a contact person.
The surface owner should:	* Ask for the name and address of the exploration firm, proof of a valid permit, evidence of insurance, the number of the surety bond, a description and locations of planned activities, the need, if any, to use water. * Notify any employees, lessees or others who may be affected by the exploration. * Learn who owns the minerals and inquire about future plans, including but not limited to well locations, placement of roads, ponds and other facilities. Seismic exploration is further explained in Title 82, Chapter 1, Part 1, of the MCA.
What is the drilling notice? When a surface owner receives a drilling notice, that usually means a developer will be entering the property soon to drill a well. The full text of the law is contained in 82-1-503; MCA.	
The developer shall:	* Provide notice to the surface owner of "any activity on the land surface" which could include survey staking, at least 10 days prior, but not more than 90 days prior to entry. Violations of the notice requirements may be reported to the Board of Oil and Gas Conservation and may result in a fine. * Sufficiently disclose the work plan so the surface owner may evaluate effects on land.
The developer and the surface owner should:	* Provide each other with contact information that can be used at any time, especially in emergency situations. * Work together on the location and appearance of wells, roads, other facilities, power lines, pipelines and impoundment ponds. * Discuss conditions of access, including times, dust mitigation and any special situations that may require special attention, such as seasonal agricultural operations.
The surface owner may:	* Want to examine the BLM handbook of Best Management Practices that addresses such things as facilities placement, road building, visual resources and reclamation. It can be found at local BLM offices and on the web at www.blm.gov/bmp. * Wish to consult an attorney.
What are surface damage/disruption payments? State law says that while developing oil and gas reserves is necessary, surface owners should be justly compensated for damages to the property caused by drilling. When determining damages, consideration must be given to how long the oil and gas activity will be present. The full text of the law is contained in 82-10-504, MCA. **Damages must be paid for:** * Loss of agricultural production and income. * Lost land value. * Lost value of improvements.	
The surface owner and mineral developer may:	* Determine the amount of damages by any mutually agreeable formula. * Decide on a form of compensation besides money.
The surface owner may:	* In the case of a producing well, ask that damages be paid annually instead of in a lump sum. * Wish to consult an attorney.
The surface owner and developer should:	* Discuss items such as reclamation of roads and impoundment pond sites; restoration of fences, trees, grasses and shrubs; length of drilling activity; and the handling of produced water.
In the absence of agreement on damages:	* The surface owner must notify the mineral developer of the damages sustained within two years after the injury occurs. * The mineral developer must reply within 60 days with a written offer. * If the surface owner does not receive a written reply, rejects the offer or receives a written rejection, the surface owner may bring an action for compensation in the district court of the county in which the damage was sustained.
What about coal bed methane development?	In general, coal bed methane development falls under the same laws and regulations as oil and conventional natural gas. But state law does address CBM operations specifically in regard to water. The full text of the law is contained in 82-11-175, MCA
Before a CBM well is drilled the developer shall:	*Notify and offer a reasonable mitigation agreement to each appropriator of water who holds an appropriation right or a permit to appropriate under Montana law that is for ground water and for which the point of diversion is within one mile of the coal bed methane well or a half mile of a well that is adversely affected by a CBM well. The mitigation agreement must address the reduction or loss of water resources and must provide for prompt supplementation or replacement of water from any natural spring or water well adversely affected by the CBM well. The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the coal bed methane well.
Ground water produced from a CBM well may be:	* Used as irrigation or stock water or for other beneficial uses defined in state law. * reinjected to an acceptable subsurface strata or aquifer pursuant to applicable law; * discharged to the surface or surface waters subject to the permit requirements of state law. * managed through other methods allowed by law.
What if the minerals are federally owned?	The BLM has its own set of regulations that apply to the relationship between a surface owner and mineral developer who leases the federal minerals. The agency produces a brochure called "Split Estate - Rights, Responsibilities and Opportunities." It is available at local BLM offices.
Under those regulations, the mineral developer must make a good faith effort to:	* Obtain a written surface use agreement with the surface owner, or * Obtain a written waiver for access to the land from the surface owner, or * Agree to pay for damages in an amount agreed to by the surface owner, or * Post a bond of at least $1,000.

For More Information

Searchable index of Montana law (MCA)
www.leg.state.mt.us/css/mtcode_const

Board of Oil & Gas Conservation
2535 St. Johns Avenue
Billings, MT 59102
(406) 656-0040
Fax: (406) 655-6015
www.bogc.dnrc.mt.gov

Mineral Leasing Section, DNRC
P.O. Box 201601
Helena, MT 59620-1601
406-444-2074
http://dnrc.mt.gov/trust/MMB/OG/

Bureau of Land Management
Montana State Office, 5001 Southgate Dr
Billings, Montana 59101
(406) 896-5000
FAX: (406) 896-5298
www.mt.blm.gov

Created by the House Bill 790 subcommittee of the Environmental Quality Council, this brochure is a summary document and is not a substitute for complete laws and regulations.

ENVIRONMENTAL QUALITY COUNCIL

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Memorandum

To: HB 790 Subcommittee Members

From: Krista Lee Evans, Research Analyst
Legislative Services Division

Date: July 15, 2005

RE: Split Estates related to oil and gas production in Montana

At your first subcommittee in August we will be having a brief discussion on split estates and how they work in Montana. In an effort to help get you up to speed more quickly, I have summarized a few issues below. Our meeting time is going to be fairly limited so it is important to read the information and be prepared to discuss questions and issues at the meeting, if necessary.

SPLIT ESTATE

Split estate general information

53A Am Jur 2d Section 176 provides that "the owner of mineral land may, if he or she desires, convey the land as an entirety, or he may sever the minerals or his rights therein from the remainder of the estate in the property and sell each separately from the other. The owner can accomplish this either by granting his or her general estate, with an or by reserving the mineral rights, or by granting the minerals or the surface alone. It may also be accomplished by lease of the mineral interest." There are more than 20 citations from around the United States that affirm this statement, one is from Montana, Rist v. Toole County, 117 Mont. 426, 159 P.2d 340 (1945).

A grantee of the minerals underlying the land becomes the owner of them; his or her interest is not a mere mining privilege. The minerals thus severed become a separate corporeal hereditament. The fact that, subsequently to the severance of the minerals from the surface estate, a conveyance of the land is made in which no reservations or exceptions of the minerals are set forth neither extinguishes the rights of the mineral owner nor vests any of the mineral rights in the grantee of such a conveyance. 53 Am Jur 2d Section 177.

With regard to the relationship between surface and mineral estate owners 53A Am Jur 2d section 331 provides "since the owner of the surface of the land and the owner of the minerals when they are severed from the surface estate have separate and distinct titles, each must exercise, with due regard for the rights of the other, the rights which go with such titles. So far as it is possible, these respective rights should be adjusted to each other, so as to conduce to the full enjoyment of the property."

What is a split estate?

The title that landowners hold to their property can exist in many forms. Many, unless they have had experience with mineral development in the past, do not realize that the ownership of the minerals that lie under the surface property may be held by a different person, company, or government agency. Section 82-10-502, MCA, provides the following definitions:

- "oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.
- "surface owner" means the person who hold records title to or has a purchaser's interest in the surface of the land.

A portion of the land that was developed in the Western United States was done so under numerous Homestead Acts. Title 43, Chapter 7, Subchapter X Stock Raising Homestead specifically requires that "All entries made and patents issued under the provisions of this subchapter shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same." Therefore, there are large portions of surface property where the underlying minerals are owned by the federal government. Split estates do not only occur with the federal government. There are numerous scenarios.

- Federal mineral/private surface
- Private mineral/federal surface
- State mineral/private surface
- Private mineral/state surface
- Private mineral/private surface -- (2 different owners)

In Montana, the Bureau of Land Management (BLM) administers 93.27 million acres of mineral and surface acres. 11.7 million acres of that total are split estate with the minerals being federally owned. I've attached Table 1-3 that was developed by the BLM that provides more detailed information regarding the acreage they manage.

Statutory provisions
Throughout the Montana Code Annotated there are multiple references to the mineral estate, mineral rights, and oil and gas estate.

Eminent Domain
Section 70-30-102(44), MCA provides that "projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others" is a public use, except for strip mining. In other words, the legislature has determined through this statute that it is a public use to condemn surface property to gain access to a mineral right.

Property Ownership Right
Pursuant to 70-16-101, MCA, the owner of land in fee has the right to the surface and to everything permanently situated beneath or above it. It is explicit in statute that there is a right of ownership. Therefore, if a property owner chooses to sell part of that ownership - the mineral rights for example - it is simply the property owner exercising their right to sell a portion of their fee simple ownership.

State Land Restrictions
The sale of state owned land is restricted in 77-2-303(1), MCA and provides the following: ". . . land that is in state ownership that in the judgement of the department of natural resources and conservation is likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits is not subject to sale of either the surface land or any of the mineral deposits.

Section 77-2-304, MCA states that "all coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state land, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state." "The state also reserves for itself and its lessees the right to enter upon state land to prospect for, develop, mine, and remove mineral deposits and to occupy and use so much of the surface of the land as may be required for all purposes . . ."

Section 77-2-327(1) provides that a certificate of purchase with regard to improvements on state lands must contain the reservations in favor of the state provided in 77-2-304 relating to coal, oil, and mineral rights in the land.

Summary

Even though it is not expressly stated in statute that there are multiple rights there are numerous other statutes that reference two property rights -- the surface right and the mineral right.

Case law regarding split estates
Case law regarding split estates generally addresses which of the two estates is dominant -- the surface or the mineral estate.

Dominant estate
As between the two estates, it is generally held that the mineral estate is the dominant estate and the surface estate is the servient estate. 53A Am Jur 2d Sec. 331 Hunter v. Rosebud County, 240 Mont 194, 783 P.2d 927 (1989)

There are multiple decisions that relate directly to whether the mineral estate or the surface estate is dominant when discussing access to surface property when exercising a right as a mineral owner. Some of the access issues are related directly to the document that reserved the mineral rights and are case specific. Others are more broad and excerpts from the Montana Supreme Court decisions are provided below.

Western Energy Co. v. Genie Land Co. 195 Mont 202, 635 P.2d 1297 (1982)
"The principal issue involved is whether the mineral reservation set forth . . . gives Western Energy the right to conduct its resource inventory operations on Genie's surface."

The court discussed the specific issues related to the mineral reservation in this particular case and went on to say " Our resolution of this controversy is based upon our conclusion that the proposed resource inventory operations are necessarily implied in the language reserving the minerals, including coal, 'together with the use of such of the surface as may be necessary for exploring and for mining or otherwise extracting and carrying away the same . . .' "

The court also referred to three other cases applying Montana law "that have established that a reasonable use of the surface by the owner of a severed mineral estate for the enjoyment of the mineral reservation may be implied from the terms of the mineral reservation, though not expressly stated therein. In Hurley v. Northern Pacific Railway Company, 153 Mont. 199, 455 P.2d 321 (1969) (reversed on other grounds) this court affirmed that a mineral owner had the right to reasonable use of the surface area under mineral reservations similar to the one here involved."

The Court also made two other statements that are relevant to the discussion regarding split estates. The first addresses implied rights and states: "It was certainly the understanding of the parties at the time of the deeds of conveyance that Northern Pacific Railway Company withheld the mineral ownership, and reserved the right to do what was necessary to extract the minerals. For us to hold otherwise with respect to such implied rights, in the light of newer regulatory adoption would be to put the mineral estate beyond the reach of its owner. In justice, that cannot be." The second statement made reference to the adoption of regulations, "It is clear that the adoption of the regulations by the state for the protection of the environment is a reasonable exercise of its police power. The necessity for mine operators to meet those requirements in exploring for or extracting minerals is accordingly a reasonable use of the surface for the purpose of mining operations."

Western Energy Co. v. Genie Land Co., 227 Mont. 74, 737 P.2d 478 (1987)
This decision had the same parties as the decision that is outlined above with the addition of the Montana Department of State Lands as an additional defendant. In the above stated case the issue was whether or not the company could have access to conduct investigative studies, etc. to determine if strip mining was feasible. This case resulted when Western Energy Co was unable to get land owner consent to strip mine the property.

The "owner consent statute" provided the following: "Consent or waiver by surface owner. In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by strip -mining operations, the application for a permit shall include the written consent or a waiver by the owner or owners of the surface lands involved to enter and commence stripmining operations on such land, except that nothing in this section applies when the mineral estate is owned by the federal government in fee or in trust for an Indian tribe."

The decision explained the issue as follows: "Relying on section 82-4-224, MCA, the owner consent statute, Genie refused Western the right to enter the land for the purpose of stripmining, thus foreclosing the possibility of Western's obtaining a permit to mine from the Montana Department of State Lands." The Montana Supreme Court went on to state that "The constitutionality of Section 82-4-224, MCA, is dispositive of this case notwithstanding various errors Western claims were committed by the District Court. **We find the statute unconstitutional**." (emphasis added)

The Court states that "It is incorrect to argue Western does not have a property interest in its leased mineral estate which is protected by the due process clauses. It has long been established that the holder of an unexpired leasehold interest in land is entitle, under the Fifth Amendment, to just compensation for the value of that interest when it is taken upon condemnation by the Untied States." (citations omitted)

While the principles of eminent domain require just compensation when private property is taken for public use, constitutional due process requirements may be met without just compensation when the state exercises its inherent police power to regulate the health, safety, and general welfare of the people. The Court provided that "the statute must serve a public, rather than a private interest and the means chosen to advance the interest must be reasonable."

Hunter v. Rosebud County, 240 Mont. 194, 783 P.2d 927 (1989)
One of the issues that was addressed on appeal by the Supreme Court in this decision was whether or not there was a merger of the mineral estate and the remaining estate. The plaintiff in the case argued that "once the mineral estate was severed from the remaining interest they could not merge into a unitary estate. According to the Hunters, mineral estates and the remaining estate are of equal dignity . . . " The Court offered this opinion, "We disagree with Hunters' argument. Their assertion that the mineral estate and the remaining estate are of equal dignity is not correct. The general rule is

that the owner of the mineral estate enjoys the dominant estate and the surface owner of the remaining estate holds the subservient estate. This theory is based upon the realities that accompany mineral exploration and development. Obviously, in order to fully utilize a mineral estate, one usually must have access to the surface."

Table 1-3. MINERAL AND SURFACE ACRES ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

State	Land Total	Federal Minerals /a/	Federal Surface Lands /b/	Split-Estate Federal Minerals /c/	BLM Public Lands /d/	Indian Trust Minerals /e/
	Million Acres	*Million Acres*	*Million Acres*	*Million Acres*	*Million Acres*	*Million Acres*
Alaska	365.48	237.0	237.0	0.0	86.5	1.2
Arizona	72.69	35.8	33.0	3.0	14.3	20.7 /f/
California	100.21	47.5	45.0	2.5	14.6	0.6
Colorado	66.49	29.0	24.1	5.2	8.4	0.8 /g/
Eastern States /h/	------	40.0	40.0	0.3	1.0	2.3
Hawaii	4.11	0.6	0.6	0.0	0.0	0.0
Idaho	52.93	36.5	33.1	3.4	11.9	0.6
Kansas	52.51	0.8	0.7	0.1	0.0	0.0
Montana	93.27	37.8	26.1	11.7	8.0	5.5
Nebraska	49.03	0.7	0.7	0.0	0.0	0.1
Nevada	70.26	58.7	58.4	0.3	47.9	1.2
New Mexico	77.77	36.0	26.5	9.5	13.4	8.4 /f/
North Dakota	44.45	5.6	1.1	4.5	0.1	0.9
Oklahoma	44.09	2.3	1.7	0.5	0.0	1.1
Oregon	61.60	33.9	32.4	1.5	16.2	0.8
South Dakota	48.88	3.7	2.1	1.6	0.3	5.0
Texas	168.22	4.5	4.5	0.0	0.0	0.0
Utah	52.70	35.2	34.0	1.2	22.8	2.3 /f/
Washington	42.69	12.5	12.2	0.3	0.4	2.6
Wyoming	62.34	41.6	30.0	11.6	18.4	1.9
Total		**699.7**	**643.2**	**57.2**	**264.2**	**56.0**

Table 1-3. MINERAL AND SURFACE ACRES ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT – concluded

Note: This table and the accompanying maps represent 2 years of effort involved in researching, collecting, analyzing, and verifying data from numerous sources, and then coordinating and consulting with BLM State staff and other agencies. It presents a "snapshot" of data as of 1999. Because of the scope and complexity involved in creating and updating this table, and the fact that it is intended to present an approximation of the surface and mineral acreages managed by the BLM, yearly updates are not planned.

Estimated acreages were based on various sources of published and unpublished data. The rationale used to develop these data is presented in "Public Lands, On-Shore Federal and Indian Minerals in Lands of the U.S.," prepared by Sie Ling Chiang of BLM's Washington Office in 2000. The first column, Land Total, is taken from Table 1-3 and the fifth column, BLM Public Lands, from Table 1-4, both from *Public Land Statistics*, 1999.

/a/ The term Federal Minerals refers to on-shore Federal minerals that are part of BLM's responsibilities. The on-shore Federal mineral acreage approximates the sum of Federal Surface Lands acres and Split-Estate Federal Minerals acres shown in the next two columns. As of 1999, the total was *approximately* 700 million acres.

/b/ Federal Surface Lands include both the public domain and acquired lands of all Federal agencies. With the exception of an estimated 4 million acres of the acquired lands, Federal mineral rights exist in all Federal lands.

/c/ The term Split-Estate Federal Minerals refers to Federal mineral rights under private surface lands. These are patented lands with minerals reserved to the U.S. Reservations may be for single, multiple, or all minerals. The 58 million acres is the mid-point of estimates ranging from 55 to 60 million acres (provided by the Colorado State Office). This results in a significantly lower acreage than that shown in Table 3-2; future updates will address this inconsistency.

/d/ On these public lands, the BLM manages both surface resources and subsurface minerals. The surface acreage is part of the Federal Surface Lands shown in the third column. The mineral acreage is part of the Federal Mineral estate included in the second column. As of 1999, BLM's public lands comprised 264 million surface acres. For an annual update, refer to Table 1-4 of *Public Land Statistics*.

/e/ As part of its trust management responsibility, the BLM provides technical supervision of mineral development on 56 million acres of American Indian trust lands except for Osage lands. All minerals in Indian trust lands are "leasable." Acreage information was obtained in 1999 from the Real Estate Services staff of the Bureau of Indian Affairs.

/f/ Navajo and Hopi oil and gas in Arizona and Utah are managed by New Mexico BLM.

/g/ Ute Mountain Ute oil and gas in New Mexico are managed by Colorado BLM.

/h/ BLM's Eastern States is responsible for Federal minerals in the 31 states east of, or bordering on, the Mississippi River.

BLM ACREAGE
MONTANA
FY 2004

COUNTY	SURFACE ACRES	SUBSURFACE ACRES
BILLINGS FIELD OFFICE		
Big Horn	27,272	397,268
Carbon	218,470	693,563
Golden Valley	7,844	67,365
Musselshell	101,904	251,516
Stillwater	5,560	244,502
Sweet Grass	15,834	357,493
Wheatland	1,195	84,623
Yellowstone	76,780	125,941
SUBTOTAL	**454,859**	**2,222,271**
BUTTE FIELD OFFICE		
Broadwater	61,042	285,338
Deer Lodge	5,377	255,469
Gallatin	7,283	663,489
Jefferson	96,397	586,594
*Lewis & Clark	*60,882	*1,171,806
Park	8,323	912,863
Silver Bow	45,042	254,198
SUBTOTAL	**284,346**	**4,129,757**
DILLON FIELD OFFICE		
Beaverhead	655,794	2,312,439
Madison	247,829	1,178,337
SUBTOTAL	**903,623**	**3,490,776**
LEWISTOWN FIELD OFFICE (Includes Havre and Great Falls Field Stations)		
Blaine (Havre FS)	452,832	770,590
Cascade (Great Falls FS)	24,703	269,627

Chouteau (Havre FS)	109,171	304,815
Fergus (Lewistown FO)	346,058	618,413
Glacier (Havre FS)	1,083	390,431
Hill (Havre FS)	14,132	153,771
Judith Basin (Lewistown FO)	11,770	351,011
*Lewis & Clark (Great Falls FS)	*11,050	*1,169,020
Liberty (Havre FS)	7,001	66,492
Meagher (Lewistown FO)	9,795	512,581
Petroleum (Lewistown FO)	325,852	443,631
Pondera (Lewistown FO)	1,289	180,854
Teton (Lewistown FO)	19,845	381,660
Toole (Havre FS)	27,549	124,312
SUBTOTAL	**1,362,130**	**5,737,208**
MALTA FIELD OFFICE (Includes Glasgow Field Station)		
Phillips (Malta FO)	1,078,672	1,806,009
**Valley (Glasgow FS)	**1,013,893	**1,398,106
SUBTOTAL	****2,092,565**	****3,204,115**
MILES CITY FIELD OFFICE		
Carter	505,037	1,196,783
Custer	332,615	750,060
Daniels	200	390,517
Dawson	62,016	630,214
Fallon	115,261	254,410
Garfield	493,491	1,859,966
McCone	200,808	900,120
Powder River	254,089	1,508,943
Prairie	447,462	601,804
Richland	51,601	795,299
Roosevelt	4,197	327,372
Rosebud	230,056	735,528
Sheridan	261	871,123
Treasure	748	25,301
**Valley	**0	**1,398,106

Wibaux	26,033	213,797
SUBTOTAL	**2,723,875**	**12,459,343**
MISSOULA FIELD OFFICE		
Flathead	0	2,380,049
Granite	38,303	742,345
Lake	0	170,182
Lincoln	0	1,727,351
Mineral	0	635,151
Missoula	19,500	653,150
Powell	82,047	788,268
Ravalli	0	1,115,073
Sanders	0	902,191
SUBTOTAL	**139,850**	**9,113,760**
MONTANA TOTAL	**7,961,248**	**37,787,318**

*Lewis and Clark County acres split between Butte and Lewistown Field Offices:
TOTAL surface acreage: 71,932
TOTAL subsurface acreage: 1,171,806

**Valley County acres split between Malta and Miles City Field Offices.
TOTAL surface acreage: 1,013,893
TOTAL subsurface acreage: 1,398,106

Data current as of September 30, 2004.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division

BRIAN SCHWEITZER, GOVERNOR

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PO BOX 201601
HELENA, MONTANA 59620-1601

August 2, 2005

MEMORANDUM

TO: Krista Lee Evans, Resource Policy Analyst, EQC – HB790 Subcommittee

FR: Monte Mason, Minerals Management Bureau Chief, DNRC-Trust Lands

RE: Split-Estate on State School Trust Lands – Data Request

DNRC manages approximately 5,158,071 surface and 6,224,202 oil & gas acres of state school trust land. This ownership breaks down as follows:

Acres by Ownership Rights	Surface	Oil & Gas
Whole Estate (both surface and oil & gas):	4,972,083	4,972,083
Surface Only (no oil & gas):	185,988	
Oil & Gas Only (no surface):		1,252,119
Total:	5,158,071	6,224,202

The department does not yet have mineral ownership layers for spatial (GIS) analysis. However, the figures above were queried from the department's ownership records and should be relatively accurate.

The department currently has over 1.3 million acres of school trust land leased for oil and gas exploration and production. We routinely deal with surface operations on both whole- and split-estate. If we can be of further assistance to the subcommittee, please let me know.

Summary of state and federal surface damage regulations

Prepared for the HB790 Subcommittee by Joe Kolman, research analyst. Sept. 1, 2005

Note: For the sake of brevity, statutes are paraphrased. Please refer to complete text for exact language and other provisions not included here.

	Applicable damages	Notice of operations	Surface bond	Settlement of disagreements	Injury notification	Other provisions
Montana	Compensate surface owner for loss of ag production and income, lost land value and lost value of improvements caused by drilling operations. Damages determined by mutually agreeable formula 82-10-504	Operator must notify surface owner 10-90 days before drilling. Disclose plan of work, operations 82-10-503		If person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained. 82-10-508	Within 2 years of date of injury or when damages become apparent to reasonable man. 82-10-506	Mitigation agreement required for CBM wells producing ground water that is source for appropriation rights or permits to appropriate under Title 85, chapter 2. Agreement offer to each appropriator for ground water and for which the point of diversion is within: 1 mile of the CBM well; or 1/2 mile of a well adversely affected by the CBM well. Agreement must address reduction or loss of water resources and must provide for prompt supplementation or replacement of water . The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the CBM well. 82-11-175
North Dakota	Compensate surface owner for loss of ag production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. Damages determined by mutually agreeable formula.	At least 20 days. Must advise of surface owner's rights and options under the chapter, including right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.		If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in court of proper jurisdiction. If compensation awarded by the court is greater than offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced.	Within 2 years of date of injury or when damages become apparent to reasonable man.	If quality or quantity of water used for domestic, livestock or irrigation within 1 mile of a well, and a certified water test was completed within 1 year preceding drilling, the owner is entitled to recover costs to re-establish that quantity or quality of water. Action must be brought within 6 years of discovery. A landowner adjacent to a drilling operation whose land receives contaminated water may file a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.
South Dakota	Damages for loss of agricultural production, lost land value, and lost value of improvements caused by mineral development. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer.		The Board of Minerals and Environment shall require the furnishing of a surface restoration bond when the landowner or lessee is not a party to the oil or gas leasing agreement in the amount of $2,000 per well or $10,000 blanket to restore the premises, insofar as possible, to condition prior to drilling. This includes surface property of the landowner or lessee, both real and personal, and the ingress to and the egress from such real property.	If the person seeking compensation receives a written rejection, rejects the offer of the mineral developer, or receives no reply, that person may bring an action for compensation in the court of proper jurisdiction.	Within 2 years after the injury becomes apparent or should have become apparent to a reasonable man.	
Wyoming	The oil and gas operator and the surface owner shall attempt good faith negotiations to reach a surface use agreement for the protection of the surface resources, reclamation activities, timely completion of reclamation of the disturbed areas and payment for damages caused by the oil and gas operations. Damages for loss of production and income, loss of land value and loss of value of improvements caused by oil and gas operations.	For non surface-disturbing activity, 5 days notice. For drilling operations 30 -180 days. Must include plan of work including facility locations, location of roads, wells, well pads, seismic locations, pits, reservoirs, power lines, pipelines, compressor pads, tank batteries and other facilities.	If no waiver or agreement is reached, must post at least $2,000 per well or, after consultation with surface owner, a blanket bond. Surface owner may object to amount or type of bond.	At any time in the negotiation, at the request of either party and upon mutual agreement, dispute resolution processes including mediation or arbitration may be employed or the informal procedures for resolving disputes may be requested through the Wyoming agriculture and natural resource mediation board. If the surface owner who submits notice of damages receives a written rejection or counter offer or rejects an offer or counter offer from the oil and gas operator, the surface owner may bring an action for compensation for damages in the district court in the county where the damage was sustained.	If the oil and gas operator has commenced oil and gas operations in the absence of any agreement for compensation for all damages, a surface owner shall give written notice to the oil and gas operator and the commission of the damages sustained by the surface owner within 2 years after the damage has been discovered, or should have been discovered through due diligence, by the surface owner. Civil action must be brought within 2 years after damage discovered.	

	Applicable damages	Notice of operations	Surface bond	Settlement of disagreements	Injury notification	Other provisions
Oklahoma	Prior to entering the site with heavy equipment, the operator shall negotiate with the surface owner for the payment of any damages which may be caused by the drilling operation.	Before entering site for drilling, operator must give notice by certified mail. Within 5 days of delivery of notice of intent to drill, parties must enter good faith negotiations to determine surface damages.	Every operator shall file a corporate surety bond, letter of credit from a banking institution, cash, or a certificate of deposit with the Secretary of State in the sum of $25,000 for the benefit of the surface owners and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to this act. Additional bond may be required.	The operator selects one appraiser, the surface owner selects one appraiser, and the two appraisers select a third appraiser for appointment by the court. Once the operator has petitioned for appointment of appraisers, the operator may enter the site to drill. The appraisers make a valuation and determine the amount of compensation to be paid by the operator to the surface owner. Appraisers report to the court. The operator and the surface owner shall share equally in the payment of the appraisers' fees and court costs. Either party may appeal the findings of the court.		Treble damages may be awarded if: (1) the operator willfully and knowingly drills before giving notice or without the agreement of the surface owner; (2) the operator fails to keep posted the required bond; (3) operator fails to notify the surface owner, prior to entering, or fails to come to an agreement and does not ask the court for appraisers. Habitable structures may not be located less than 125 feet from wells or 50 feet from other operating equipment unless agreed to by developer and surface owner.
Tennessee	(1) Lost income or expenses from not being able to use or access land for prior use. (2) market value of crops destroyed, damaged or prevented from reaching market, (3) damage to water supply in use prior to operations, (4) cost of repair of personal property (5) the diminution in value of surface lands and other property after completion of the surface disturbance determined according to the actual use made thereof by the surface owner immediately prior to the commencement of operations.			Surface owner may select court or parties may agree to arbitration. If the amount awarded by arbitration or the court is greater than offered by developer, surface owner also awarded reasonable attorney fees, costs of expert witnesses, any other costs legally assessed, plus interest since drilling started. In binding arbitration, compensation to surface owner determined by a disinterested arbitrator chosen by the surface owner and developer from a list of arbitrators approved by the American Arbitration Association. Hearings conducted as provided in title 29, chapter 5, part 3. Each party pays 1/2 arbitrator cost.	Surface owner shall notify by certified mail the oil and gas developer of the damages sustained by the person within 3 years after the injury occurs.	
West Virginia	(1) Lost income or expenses from not being able to use or access land for prior use. (2) market value of crops destroyed, damaged or prevented from reaching market, (3) damage to a water supply in use prior to operations, (4) cost of repair of personal property, and (5) diminution in value of surface lands and other property after completion of the surface disturbance determined according to the actual use made thereof by the surface owner immediately prior to the commencement of operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.			Surface owner may bring action in circuit court or elect to binding arbitration. Surface owner and developer each choose one arbiter and those two arbiters select a third. The arbitrators shall hold hearings, take testimony and receive exhibits as necessary to determine the amount of compensation. However, no award of compensation shall be made unless the panel of arbitrators has first viewed the surface estate in question. Each party shall pay the compensation of such party's arbitrator and one half of the compensation of the third arbitrator, or such party's own court costs as the case may be.	Surface owner shall notify the oil and gas developer of the damages within 2 years after the date that the oil and gas developer files notice that reclamation is commencing. Notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing.	
Illinois	Only applicable if surface owner does not consent in writing to drilling. Mineral and surface ownership must be severed. Surface owner entitled to reasonable compensation for damage to growing crops, trees, shrubs, fences, roads, structures, improvements and livestock caused by drilling and subsequent production. Compensation for negligent acts causing measurable damage to productive capacity of the soil.	At least 8 days. If surface owner agrees to discuss an agreement, topics include: road placement, access points, construction and placement of pits, restoration of fences, use of waters on surface lands, removal of trees and surface water drainage changes caused by drilling operations.		Failure to agree upon, or make compensation required, shall not prevent drilling. Operator shall pay surface owner no later than 90 days after completion of the well. Surface owner may seek compensation in the circuit court; If the operator fails to tender payment within the 90 days or payment is not reasonable, surface owner entitled to reasonable compensation and attorney's fees. If operator relies on a third party appraiser or fair market value, such amount shall be conclusively deemed to be reasonable, and there shall be no award of attorney's fees.		Operator must plug well, restore surface and any improvements to a condition as near as practicable to condition prior to drilling. Surface owner and operator may waive requirement subject to the approval of the department that the waiver is in accordance with its administrative regulations.
Kentucky	Only applicable if surface owner does not consent in writing to drilling. Surface owner entitled to reasonable compensation for damages to growing crops, trees, shrubs, fences, roads, structures, improvements and livestock caused by the drilling and subsequent production. Compensation for negligent acts causing measurable damage to productive capacity of the soil.	At least 8 days. If surface owner agrees to discuss an agreement, topics include: road placement, access points, construction and placement of pits, restoration of fences, use of waters on surface lands, removal of trees and surface water drainage changes caused by drilling operations.		Failure to agree upon, or make compensation required, shall not prevent drilling. Operator shall pay surface owner payment no later than 90 days after completion of the well. Surface owner may seek compensation in circuit court; If the operator fails to tender payment within 90 days or payment is not reasonable, surface owner entitled to reasonable compensation and attorney's fees. If operator relies on a third party appraiser there shall be no award of attorney's fees.		Operator must plug well and restore surface and any improvements thereon to a condition as near as practicable to their condition prior drilling. Surface owner and operator may waive requirement subject to the approval of the department that the waiver is in accordance with its administrative regulations.

	Applicable damages	Notice of operations	Surface bond	Settlement of disagreements	Injury notification	Other provisions
Arkansas	Surface owner damaged or threatened with damage by the neglect of the operator will have a lien upon the fixtures or equipment owned by the operator, with all oil, gas, and other hydrocarbons produced to secure payment for all damages that can be lawfully recovered under the terms of the oil and gas lease or leases for that property. The lien shall also secure payment for any other damages that the surface owner would be entitled to recover from the operator under the laws of the State of Arkansas.	Before entering site for drilling, operator must give notice by certified mail or in person.			File claim within 1 year of issuance of the permit for drilling operations. Claim is subordinate to the other claims of the Oil and Gas Commission provided for in state law and regulations.	
Indiana	Operator accountable for actual damage from operations to the surface, improvements, growing crops. Operator not liable for punitive damages. Does not increase damages between a lesser and a lessee in a valid lease that specifies damages if damages are not due other than damages expressly provided by contract between cotenants or the lessees of cotenants of a like estate in the land.	Operator may enter land without surface owner consent.				No well may be drilled within 200 feet of an existing house, barn, or other structure (except fences) without the express consent of the owner of the structure.
Federal (BLM)	Written consent for entry and use required unless (1) waived, (2) payment of damages to crops or other tangible improvements, (3) posting of bond to secure payment for damages. Crops include those for feeding domestic animals, such as grasses, hay, and corn, but not plants unrelated to stock raising. Tangible improvements include those relating to domestic, agricultural and stock raising uses, such as barns, fences, ponds or other works to improve the utilization of water, but not those associated with nonagricultural development.	Currently, operator notifies surface owner. Under proposed new rules, BLM would solicit input from surface owner on APD during onsite inspection.	At least $1,000 (43CFR3814) (Proposed new rules would clarify that BLM can bond for off-lease facilities such as CBM impoundment ponds).	Lessee or surface owner may appeal bond amount to director of BLM. (43CFR3814)		

http://data.opi.state.mt.us/bills/mca_toc/82_10_5.htm
http://www.state.nd.us/lr/cencode/t38c111.pdf
http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=45-5A
http://legisweb.state.wy.us/2005/enroll/SF0060.pdf
http://www.lsb.state.ok.us/
http://www.tennesseeanytime.org/laws/laws.html
http://www.legis.state.wv.us/WVCODE/22/masterfrmFrm.htm
http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2197&ChapAct=765%26nbsp%3BILCS%26nbsp%3B530%2F&ChapterID=62&ChapterName=PROPERTY&ActName=Drilling+Operations+Act%2E
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http://www.in.gov/legislative/ic/code/
http://www.blm.gov/nhp/news/regulatory/CFR/43CFR3810.html

Landowners voice complaints at Havre oil and gas meeting

Jared Ritz
Havre Daily News
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Dozens of people from around Montana on both sides of the oil and gas debate - industry people and landowners - showed up and spoke their minds Monday at the first meeting of an Environmental Quality Council subcommittee created by the Legislature.

The morning meeting, attended by about 80 people and filling a room in Montana State University-Northern's Brockmann Center, was the first in a series of meetings to discuss possible regulation of the industry. The subcommittee was created by a House resolution that passed after legislation addressing some of the issues failed. The results of the study and any recommendations for legislation will be reported to the 2007 Legislature.

The 12-person committee is made up of four state lawmakers who are on the EQC, two public members of the EQC, and five at-large members from Montana and one from Wyoming.

The majority of people who stood to testify from the audience were landowners. Each speaker had complaints specific to themselves or those they know, and most focused on inconveniences, both large and small, of the split estate system. Split estates happen when one party owns the surface and someone else owns the minerals underneath.

The most common complaints voiced at the meeting were about the need for an easier and less expensive system to settle disputes over reimbursement for damage done during and after the drilling process and the landowners' need for better notification and more input in the process.

Cole Chandler, operations manager for Klabzuba Oil and Gas Inc., a company that has drilled "a couple hundred wells and laid miles and miles of pipeline" in north-central Montana in recent years, said he knows his business has an impact on the landowners and their business.

"The goal is to minimize these problems, and to be good neighbors," he said. "There's conflict with any relationship, but through communication we can get it done."

So far, all problems have been worked out without having to turn to government regulation, he said.

State Rep. Bob Bergren, D-Havre, said some things should be simplified or changed to help the surface owner's situation.

"There's a huge boom in my county and the counties surrounding" Hill County, Bergren said, but he doesn't want to see a boom in one industry affect "the people who will be here long after the gas and oil are gone," he said.

He, along with numerous people at the meeting, said the surface owners need some form of recourse for reimbursement claims denied by the companies beside suing them in court.

The need for an arbitration process to settle disputes between the two parties was brought up frequently by landowners.

Using heavy machinery to dig wells and ditches on farm and ranch property necessitates road construction, and the process as a whole can disrupt the landowner's operations, they said. Sometimes the amount the oil and gas people think is fair to pay for the damage and what landowners would like is different, landowners said. Right now, the only recourse an upset landowner has is to take the company to court, which often costs more than the amount they feel they are owed, they said.

Some of the oil and gas companies have "more attorneys on their letterhead than there are people in Gildford," said Gildford resident Merten Freyholtz. There should be another process in which these disputes can be hammered out, he said.

Herb Vasseur, president of the Montana Land and Minerals Owners Association, said nobody wants to go to the trouble of going to court.

"It's going to cost a bundle, and often the private individual doesn't have the resources to go against a big corporation," he said.

The association filed a federal lawsuit in June against Devon Energy Corp., a major gas producer in the area. The lawsuit contends the Oklahoma City- based company owes $5 million in royalty payments to landowners in Montana, after improperly computing the price on which it bases royalty payments and underreporting the amount of gas produced.

Vasseur said he thinks more cooperation and discussion between the two parties at the start of the process, all the way back to when the lease for the underground minerals is sold, would go a long way to relieve headaches. Right now, oil and gas companies only have to give a 10-day notice before they begin drilling on someone's land. If people are given some "common courtesy" and are filled in about the process and their rights as the process moves along, things would run better on both sides, Vasseur said.

Many landowners are not educated about the oil and gas industry, he said.

"A lot of times, their ignorance is a detriment to them," he said. "I think the (industry people) should be more up front with these people about what their rights are."

Vasseur said he would like to see the committee "come up with some guidelines that are workable from both the industry and landowner perspectives.

"Some companies are considering that surface owner," he said, "and you have other companies that are disregarding them."

Another issue brought up was water. All of the drilling and piping can upset underground water wells and springs, making drinking water and crop water unuseable, some landowners said.

Wally McRae of Rosebud County, representing the agriculture and conservation group Northern Plains Resource Council, said working through issues of reimbursement and notification are "minor Band-Aid solutions to the real problem" of water.

"Reimbursement cannot come close to replacing" the natural water on a farm or a ranch, he said.

Chandler said his company does its best to have a good working relationship with every landowner it works with. Even though a 10-day notice is all that is required, it is common procedure for the company to send someone to speak with the landowner months in advance to give them a heads-up and discuss preferred access and sometimes damages, he said.

At-large committee member Joe Owen, a landman from Billings, said in an interview he thought the meeting went well. He said he was expecting most of the comments to be negative toward the industry, simply because those who are happy don't come to voice their opinions.

Sen. Mike Wheat, D-Bozeman, who chairs the subcommittee, said he was happy with turnout and the responses the committee received on its trip.

"This is exactly what we hoped for in coming to communities like Havre," he said. "It went just as I hoped it would."

Billings Gazette

WYOMING

The Source

Section B
Friday, October 28, 2005

Opinions on CBM vary at hearing

By CLAIR JOHNSON
Of The Gazette Staff

SHERIDAN, Wyo. — A Montana legislative panel studying oil and gas issues heard mixed views Thursday from Wyoming and Montana residents on whether the state needs better laws to protect surface landowners facing mineral development.

Some ranchers said their experience with developers has been good and that Montana doesn't need more regulations. Others said they've lost wells and worry about drained aquifers and long-term damage.

Members of the Montana Environmental Quality Council subcommittee met at Sheridan College to hear about Wyoming's split-estate law, which went into effect in July, and to gather comments from the public.

More than 50 people attended the session, which lasted all afternoon. The panel will tour coalbed

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CBM

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methane sites in both states today.

The subcommittee was formed by the passage of House Bill 790 in the 2005 Legislature and is charged with studying surface-use agreements for all mineral development as well as reclamation and bonding for coalbed methane operations. Study results and possible recommendations will be presented to the 2007 Legislature.

Panel chairman Sen. Mike Wheat, D-Bozeman, said the committee is trying to determine whether the Legislature needs to strengthen existing laws that deal with surface owners and owners of subsurface minerals.

Much of the discussion before the panel centered on split estates, a situation that occurs when one party owns surface rights to land and another party owns the rights to minerals below the surface. Split estates are common in the mineral-rich Powder River Basin of Wyoming and Montana.

Wayne Fahsholtz, president of the Padlock Ranch, which lies in both states, said the cattle ranch has more than 100 wells drilled and that it successfully negotiated agreements with the developer, Nance Petroleum. The developer is willing to accommodate the ranch's needs by moving roads and compressor stations, and to make sure water discharges from coalbed methane wells are handled properly, he said.

"I don't know how you can grow anything back without topsoil. This is what happened to me."

— Gary Packard
Powder River rancher

While the Padlock is satisfied with its relationship with Nance, Fahsholtz said it was exciting that "we could be empowered as surface owners" through a split-estate law.

Overall, a split estate is a bad situation for the surface owner because of what it can do to future land values, open and scenic spaces and water resources, he said.

Carl Dewey, a rancher in Sheridan County, Wyo., and Big Horn County, Mont., has had about 40 coalbed methane wells on his property for five years. Dewey told the panel he negotiated what he needed with the developer and has benefited from having more water for irrigation and cattle. Development has cost him his privacy, he said — he can't run outside in his underwear anymore.

Dewey urged legislators to not overly restrict surface owners and to not allow special interest groups to slow down production.

Another Montana resident, Connie Morris, a nurse from Otter who also has a residence in Sheridan, talked about the country's need for energy development and said Montana already has regulations to protect surface owners.

"We do not need more government," she said. "Redundancy is not the answer."

But others told of bad experiences and urged the panel to consider more protections for surface owners.

Powder River rancher Gary Packard, of Johnson County, Wyo., said his land has been drilled and condemned for a pipeline, a water line and power line. He has lost three artesian wells, and the topsoil wasn't saved.

"I don't know how you can grow anything back without topsoil. This is what happened to me," he said.

Montana rancher Art Hayes Jr., of the Brown Cattle Co. near Birney, said he is concerned about the long-term effect of draining aquifers by drilling for coalbed methane. His ranch has 16 wells, 13 of which are in coalbed methane aquifers and 10 are artesian wells.

"Those wells are priceless," he said.

If he loses a well from coalbed methane drilling, a new one could be drilled, but he would lose his older water right for a newer, less valuable one, Hayes said.

Surface owners need to be guaranteed a source of water, Hayes told the panel. Having developers offer water well mitigation agreements is not enough, he said.

Bonding and reclamation is another issue the panel is studying. Mark Fix, a Tongue River rancher near Miles City and member of the Northern Plains Resource Council, said reclamation bonds should reflect the actual reclamation costs.

Wyoming's split-estate law has not been in effect long enough to know how well it is working, said the bill's sponsor, Rep. Rosie Berger, R-Big Horn. The measure, which requires a good-faith attempt by both sides to reach a surface-use agreement, was passed after three years of negotiations among lawmakers, landowners and industry representatives.

"We're too early yet to know if this is effective legislation," Berger said. But the law has "raised the bar on doing good work and building good relationships," she said. The law makes developers more responsive and brings the landowner to the table, she said.

Laurie Goodman, of the Landowners Association of Wyoming, which supported the legislation, talked about the provisions of the split-estate law, such as having a 30-day notice to landowners when developers want to begin operations and compensation for "loss of land value."

The lost-land-value provision covers not only damages to land but also to commercial operations such as hunting or recreational opportunities, she said.

The association, she said, believes that the greatest amount of environmental protection comes by empowering the landowner.

Montana panel hears about BLM-Wyoming feud

By BOB MOEN
Associated Press writer

SHERIDAN — Western states need to band together and oppose a federal move to disregard state laws protecting the rights of landowners affected by mineral development, an advocate for landowners in Wyoming said.

Laurie Goodman of the Landowners Association of Wyoming told a Montana panel Thursday that the Bureau of Land Management was attempting to avoid applying a new Wyoming law to lands where it owns the mineral rights.

The Wyoming law gives surface owners more bargaining power and rights when dealing with oil and gas producers seeking to extract the minerals owned by someone else under their land. When the land surface and minerals underneath are owned by two different parties, it is known as a split estate.

Wyoming has 11 million acres of split-estate land where the federal government owns the minerals.

Goodman told the subcommittee of the Montana Legislature's Environmental Quality Council that there are about 38 million acres across the West where the federal government owns the minerals and someone else owns the surface land.

The Montana panel, consisting of state lawmakers and private citizens, held a hearing in Sheridan about Wyoming's new split estate law. The panel was created by the 2005 Montana Legislature to study surface use agreements for all mineral developments, and reclamation and bonding for coal-bed methane operations.

Sen. Mike Wheat, D-Bozeman, said the panel was trying to see if Montana's own split-estate law should be strengthened.

Wyoming's law took effect July 1. But the BLM has told the state that it doesn't believe the law applies to federally owned minerals under land it doesn't own. "The impact of that would be to eliminate the state's ability to regulate rights for private property owners," Goodman said. "Unbelievable. Really, it's unbelievable."

Sen. Dan McGee, R-Laurel, said it sounds to him that the BLM is relying on following federal law that dates back to the birth of the nation rather than newer state laws that deal with modern issues.

"It will be interesting to see how they either come to the table with us or don't," McGee said. "It's interesting to see how it's currently playing out in Wyoming. This is the first we've heard about that."

But he also knows that "what we do on the state level can only go so far," he said.

"I believe in the end there will need to be a federal address to this as well," McGee said. "I'm very clear in my mind that that's going to have to happen."

Rep. Rosie Berger, R-Big Horn, who was among the leaders in the Wyoming Legislature for the split-estate law, said the matter likely will end up in court. Berger said the Wyoming law was a good piece of legislation that should apply to private land with federal minerals.

"We did not feel it was necessary to eliminate those federal lands in our legislation because we still have a private owner on the surface," she said.

The Montana panel also took testimony from a number of ranchers, minerals owners, conservationists, oil representatives and landowners — all with varying opinions on how the state should proceed on split estates.

Clint McRae, who runs a cow-calf operation near Colstrip, Mont., said the panel needed to address surface owners' concerns about the length of notice they get about coming oil and gas activity as well as dust control, road conditions, weeds, water and other issues.

But Hugh Kendrick, whose family has land and mineral interests in southeast Montana, said the rights of mineral owners to have their minerals extracted shouldn't be usurped to protect surface owners.

The panel, which has held meetings previously in Havre and Helena, has additional meetings scheduled in January and February in Helena, Sidney and Billings.

The Sheridan Press, Friday, October 28, 2005

Crossing the border for information

• Montana delegates hear about Wyoming CBM in Sheridan

By Mark Heinz
Staff reporter

What, if any, further steps Montana takes to regulate its oil and gas industry might depend in part on the opinions and experiences of Wyoming residents who have dealt with this state's booming coal-bed methane industry.

That's what brought a 14-person panel, officially known as the "Subcommittee of the Environmental Quality Council," to Sheridan College for a public hearing Thursday. The panel is made up about equally of Montana legislators and citizens.

Residents of Wyoming and southeastern Montana had plenty to say to the panel during a public comment period.

Kenneth Medicine Bull, who runs a family ranch on the Montana side of the Tongue River Valley, urged caution in CBM development.

"The state must make the rules consistent to ensure continued water and air quality," he said.

Connie Morris, a Montana resident who also keeps a home in Sheridan, said Montana's oil and gas regulations can be applied to CBM, and further restrictions might choke the industry before it can gain a real foothold in that state.

CBM gives both Montana and Wyoming a chance at a clean-burning fuel and more jobs, she said.

"Unemployment causes a migration of Montana workers and their families elsewhere and deprives the state of its greatest resource — its people," she said.

Other concerns cited during the public comment period included the effects of CBM drilling on groundwater and the fair treatment of people owning subsurface mineral rights on property where the surface is controlled by others.

Montana's Legislature has charged the panel with looking into oil and gas development around that state and nearby in Wyoming, said member Sen. Mike Wheat, D-Bozeman.

Please see **CBM, Page 2**

CBM

(Continued from Page 1)

The panel held a public hearing in Havre, Mont., and will next travel to Sidney, Mont., to look at "more traditional" oil drilling, he said.

The group chose to come to Sheridan because of the amount of CBM development here, he said, and the potential for growth of that industry just across the border in his state.

"It's also close enough to Montana that Montana residents could come to Sheridan for this hearing if they wished to do so," he said.

Panel members also plan to tour some CBM drilling sites in Wyoming today, Wheat said.

Ultimately, the panel's findings could drive the Montana Legislature's approach toward regulating that state's oil and gas industry as a whole, he said.

The panel also heard from Wyoming Rep. Rosie Berger, R-Big Horn, regarding recent revisions to Wyoming's split-estate law.

A split estate exists when one party owns the surface of a piece of land, but another owns the mineral rights underneath it.

Berger said Wyoming's split-estate reform worked primarily because efforts were made to get all interested parties involved — some of which included CBM industry representatives, agricultural interests and sportsman's groups.

"The coalition approach was very important," she said. "We wanted to give everybody a chance to talk."

Laurie Goodman of the Landowners Association of Wyoming said Montana needs to grasp the level of change CBM development can bring.

"Our state and our landscape is going to look very different in 10 years," she said.

Lucy Hansen, representing the Wyoming Agriculture Department's mediation program, said the informal mediation her department offers can often settle matters between CBM developers and landowners without litigation.

In many cases, mediators can help both parties reach agreement in just a few hours and at a cost of a few hundred dollars, she said.

Residents voice concerns during public oil board meeting

By Ellen Robinson

Sidney Herald

Voices of the people were heard by a legislative subcommittee during Friday's public oil and gas discussion panel in Sidney.

The subcommittee of the Environmental Quality Council toured Richland County's oil fields Thursday. The tour was followed up Friday with the subcommittee hearing a variety of perspectives from Richland County residents.

Addressing industry regulation, residents voiced concerns, thoughts and opinions about surface and operator agreement timelines, surface use agreements, damages and bonding issues.

Annual rentals to surface owners for use of the property during the long-term extraction of minerals was a top concern that many who voiced concerns had in common. According to the current Montana law, an excavation company may pay annual rental fees, but they aren't required. Many of those who shared personal experiences explained the various barriers encountered when seeking fair compensation. Testimonies illustrated the deep value lost from the extensive damages. These compromise surface use of the land and result in a lower quality of life.

Dennis Trudell, Northeastern Montana Land and Mineral Owners Association, said, an annual rental fee of $1,000 is merely a drop in the bucket when compared to the millions spent on a well. He explained the average compensation a surface owner gets for the disturbance is between $5,000-$6,000 for the life of the well. Trudell argued the amount, when calculated over a well's average lifetime, is very little in comparison to the value of losing 30 years of land use along with the added inherent lifestyle disruptions.

Trudell also cut to the chase addressing some more of the association's top concerns such as extending the 10-day drilling notification surface owners receive before the process begins. He argues that 10 days is too short in many cases, such as when someone is out of town for an extended period of time.

"They are trying to cram an agreement because they are eager. Many things can go wrong in 10 days. If they show up with no notice, it's a $50 fine and away they go," Trudell said. "We need some teeth here because we even have companies who are unaware they have to notify landowners; it happened to me."

The notification time is 30 days in Wyoming and 20 days in North Dakota.

The consistent stream of individuals sharing personal experiences brought to light the indirect impact landowners endure during the excavation process and through the aftermath.

"Today increasingly, property value is tied to recreational use and visual appeal. The real value loss is not just in the product loss from the land (being) taken out of production, it's the

depreciation which takes place on the land," Deb Reichman, area resident, said.

Residents reported thick layers of dust on crops and pastures, large rocks discarded from the oil site roads into fields damaging expensive farm equipment, and environmental impact concerns.

"We're not against the oil exploration, we just want fair compensation," Trudell said. "Annual rentals are so important. It would really improve relations and smooth a lot of this stuff over."

The subject of landowners feeling an annual rental fee would better compensate for the long-term damages properties endure from oil and gas extraction surfaced as a top issue among many who voiced concerns and ideas.

Scott Staffanson expressed the view that landowners should have input from the start of the process. He feels if oil companies would involve the landowners in the staking out process, relations would be improved.

"I'm rattled, and it's not about the money. They absolutely refused any input from me, and I know the land. It took them four or five trips back and forth across my land to come to the same conclusion that I was trying to tell them from the start about the land," Staffanson said. "We've been out there for generations. I think it could even save the oil companies money if they would just let the landowners get involved."

The difficulty of "the little person on the land" taking the big company to court also surfaced as a common frustration of those who expressed feeling violated by energy companies. The court fees, which are easy for a large company to absorb, are a great barrier for many of the surface owners. Many reported feeling intimidated through the negotiation process.

"We thought if we asked, they would give us an annual rental on our surface agreement. But they said we don't pay annual fees, if you don't like it, take us to court. It isn't easy to go up against an oil company in court," Linda Simonson, area resident, said.

A Richland County resident, who wears many hats on the subject of oil, spoke expressing his concerns as a resident, surface owner, mineral owner, rancher and politician. Don Steppler explained his position as a county commissioner, "We have been behind the eight-ball trying to keep up because of the tax holiday of the first 18 months. The dust concerns extend over 300-400 miles of county roads."

He said at a cost of $5,000-$6,000 a load of dust control agents, which is only enough to cover 3/4 of a mile, dust control is cost prohibitive.

"It may look like a lot of money the county is getting, but we're looking to the future when we may no longer have this money," Steppler said.

ellenr@sidneyherald.com

Oil and gas development in Eastern Montana

House Bill 790 required that the subcommittee study oil and gas regulations in Montana. The committee has seen a statewide map of oil fields, but in an effort to provide a more specific visual context, staff created maps showing well locations in Eastern Montana areas that may be discussed at the Sidney meeting.

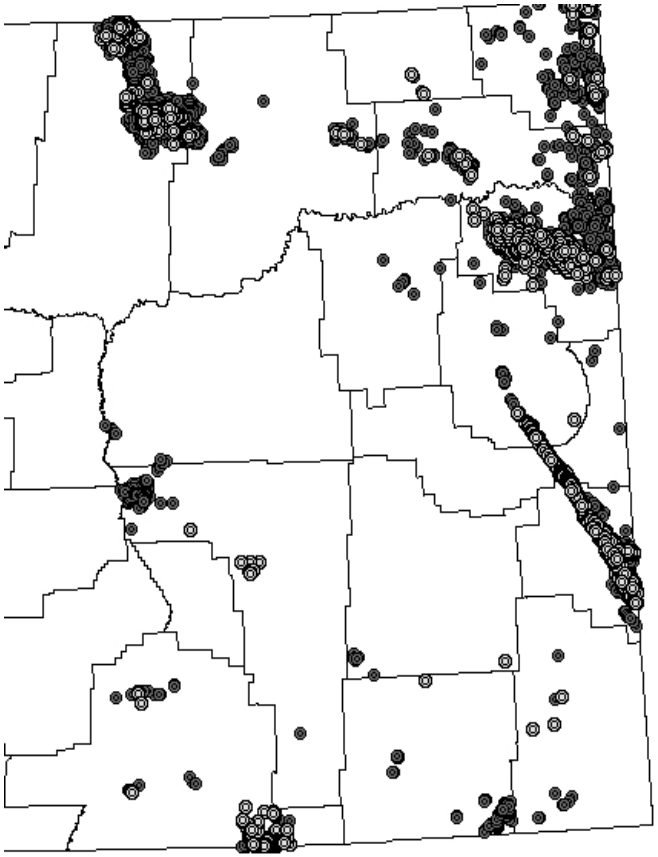
Maps were created using well data maintained by the Board of Oil and Gas Conservation. Data are current through mid-November 2005. Wells shown include producing oil and gas wells, or those online to produce. Also depicted are wells plugged in accordance with MBOGC rules.

By Joe Kolman, research analyst

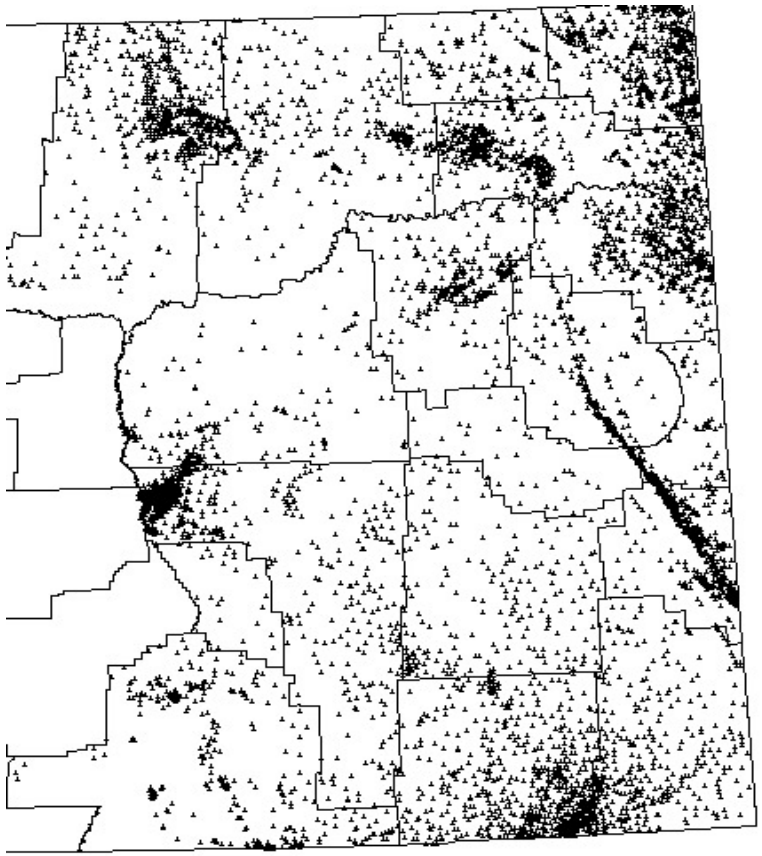
Summary of well statistics by county

COUNTY	Oil, gas, CBM wells producing or online to produce	Wells plugged & approved
Big Horn	746	386
Carter	12	379
Custer	8	210
Daniels	4	139
Dawson	67	222
Fallon	1117	484
Garfield	16	241
McCone	9	304
Phillips	1510	575
Powder River	108	812
Prairie	14	56
Richland	617	508
Roosevelt	208	650
Rosebud	125	864
Sheridan	257	609
Treasure	0	31
Valley	170	354
Wibaux	125	121
Total	5113	6945

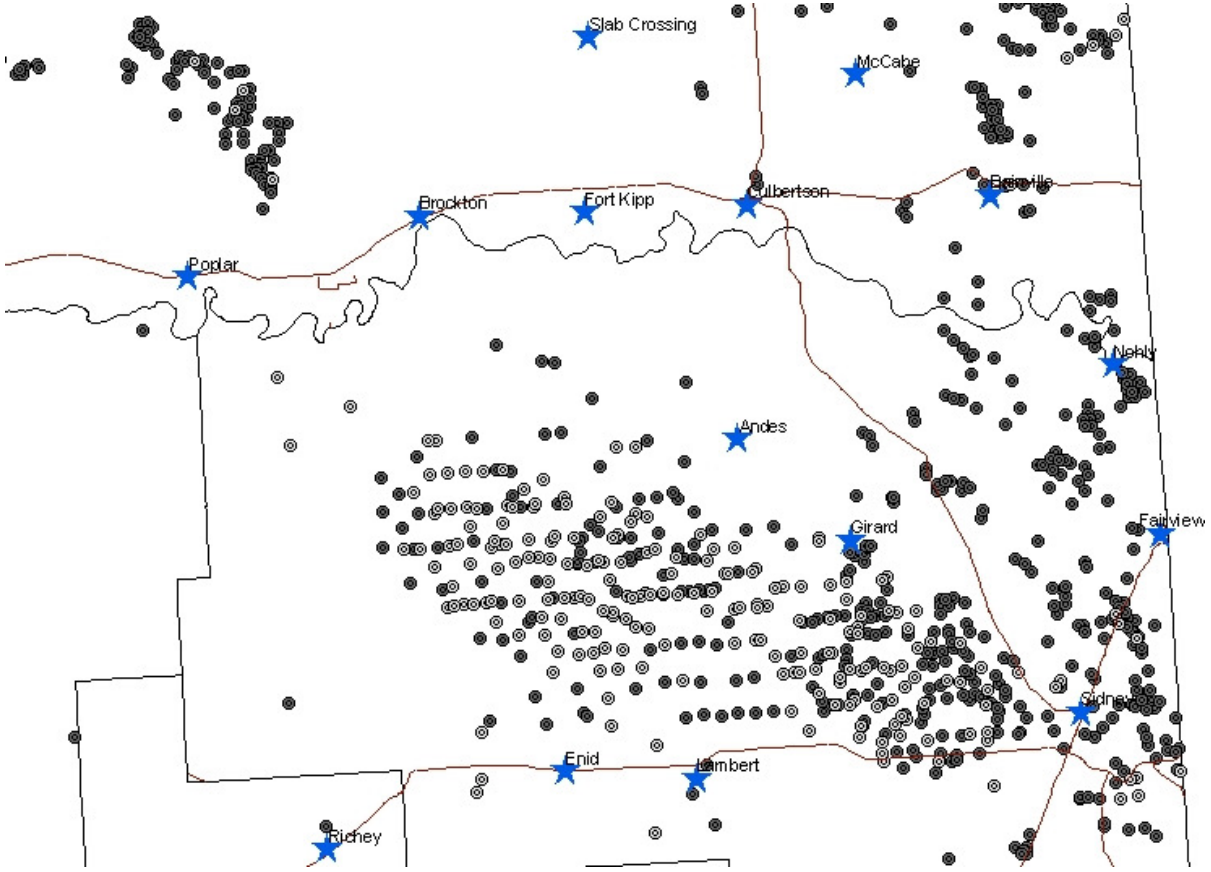
Producing wells
Lighter shade are wells online since 2001



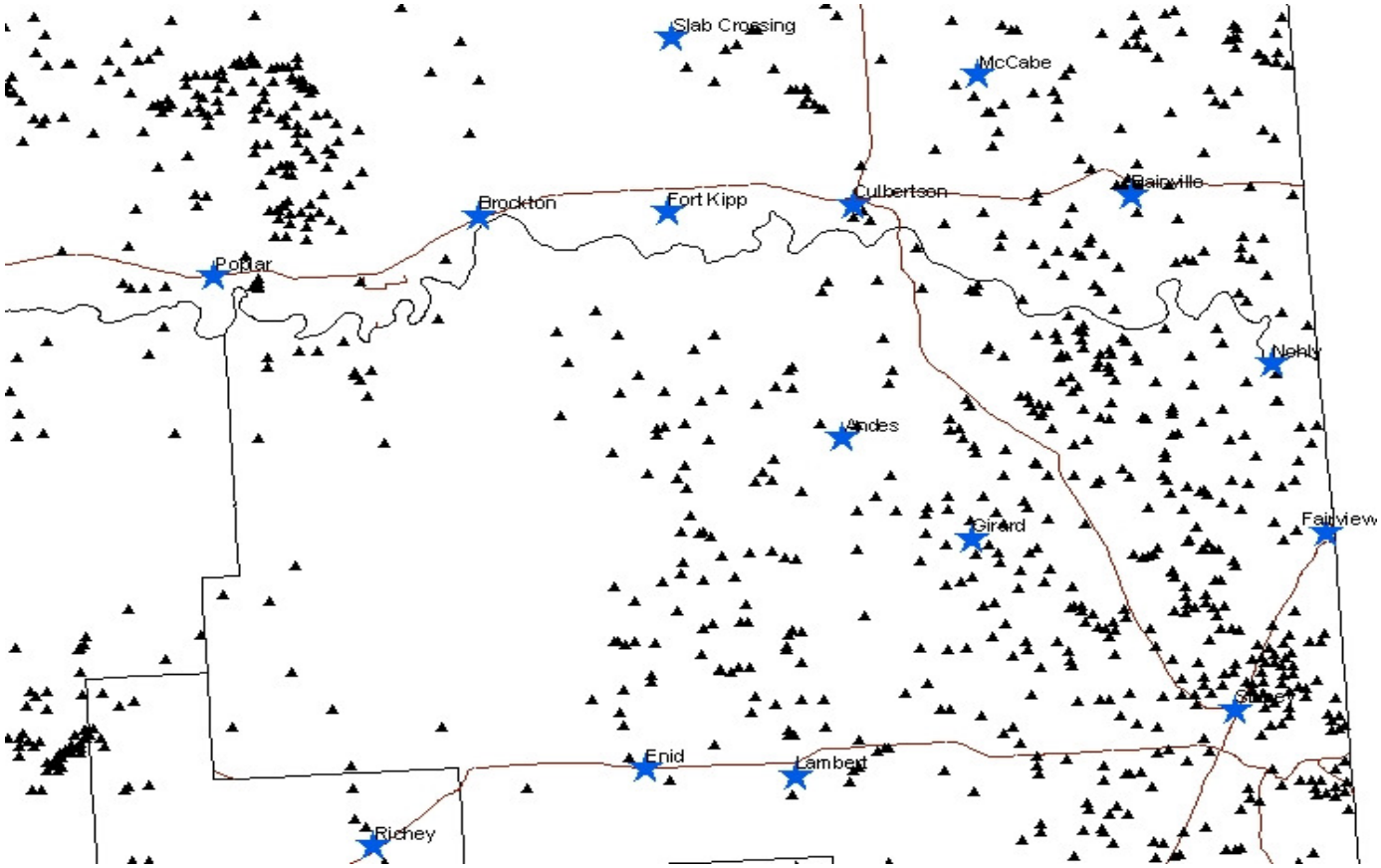
Plugged and approved wells



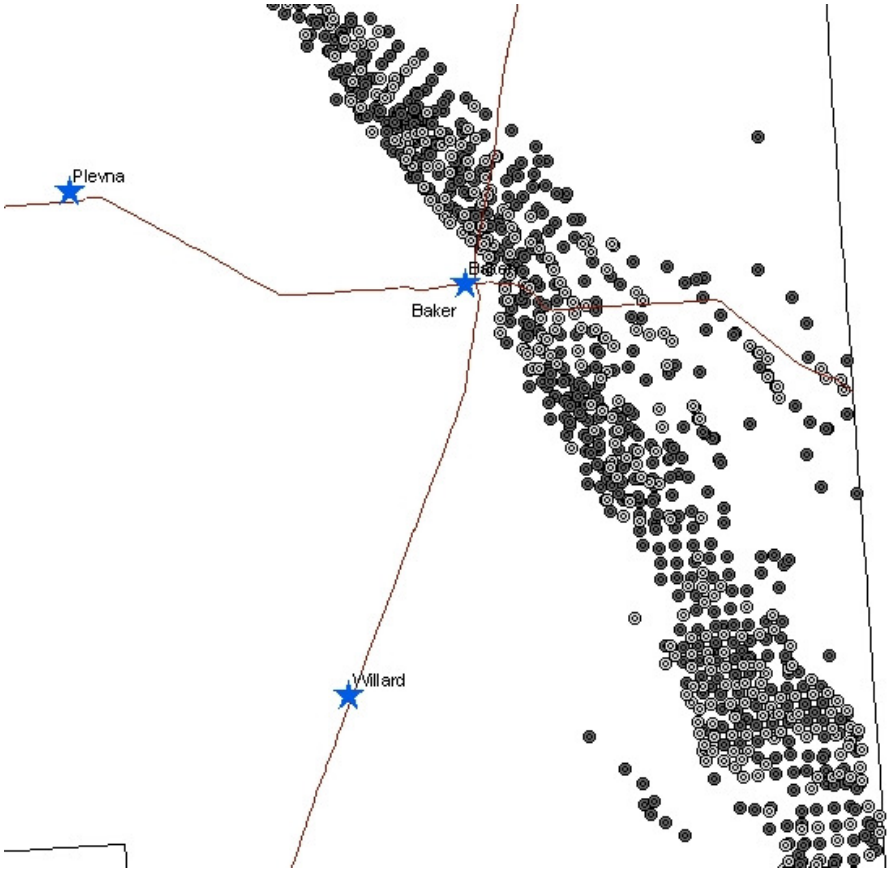
Sidney - producing wells
Lighter shade are wells online since 2001



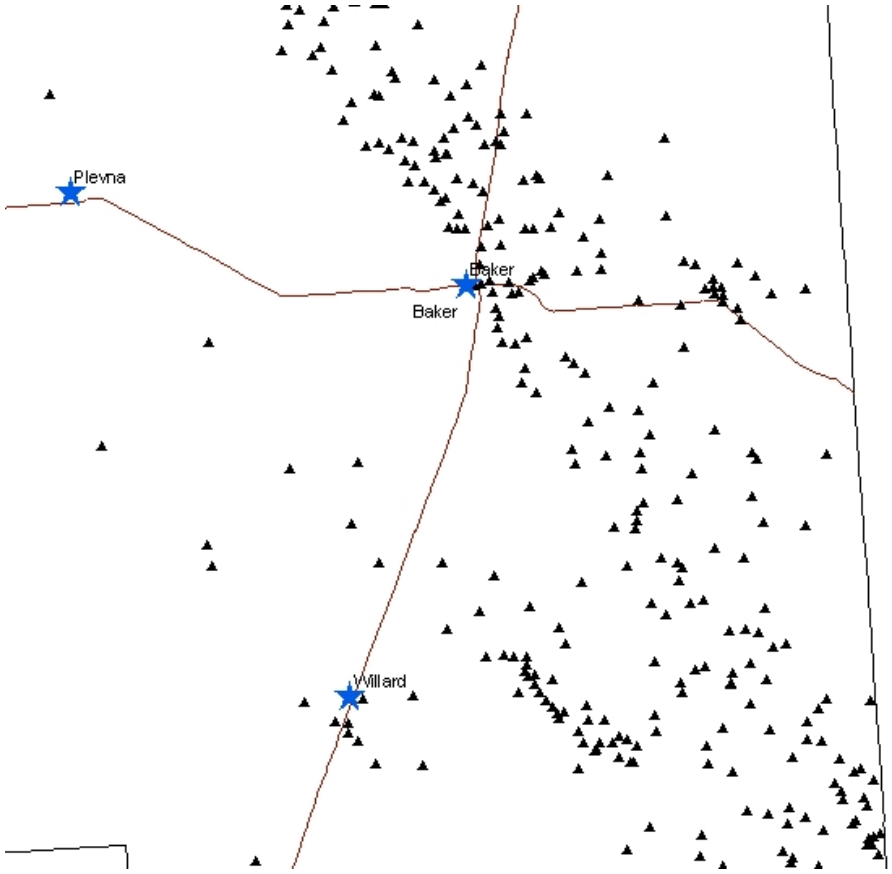
Sidney - plugged and approved wells



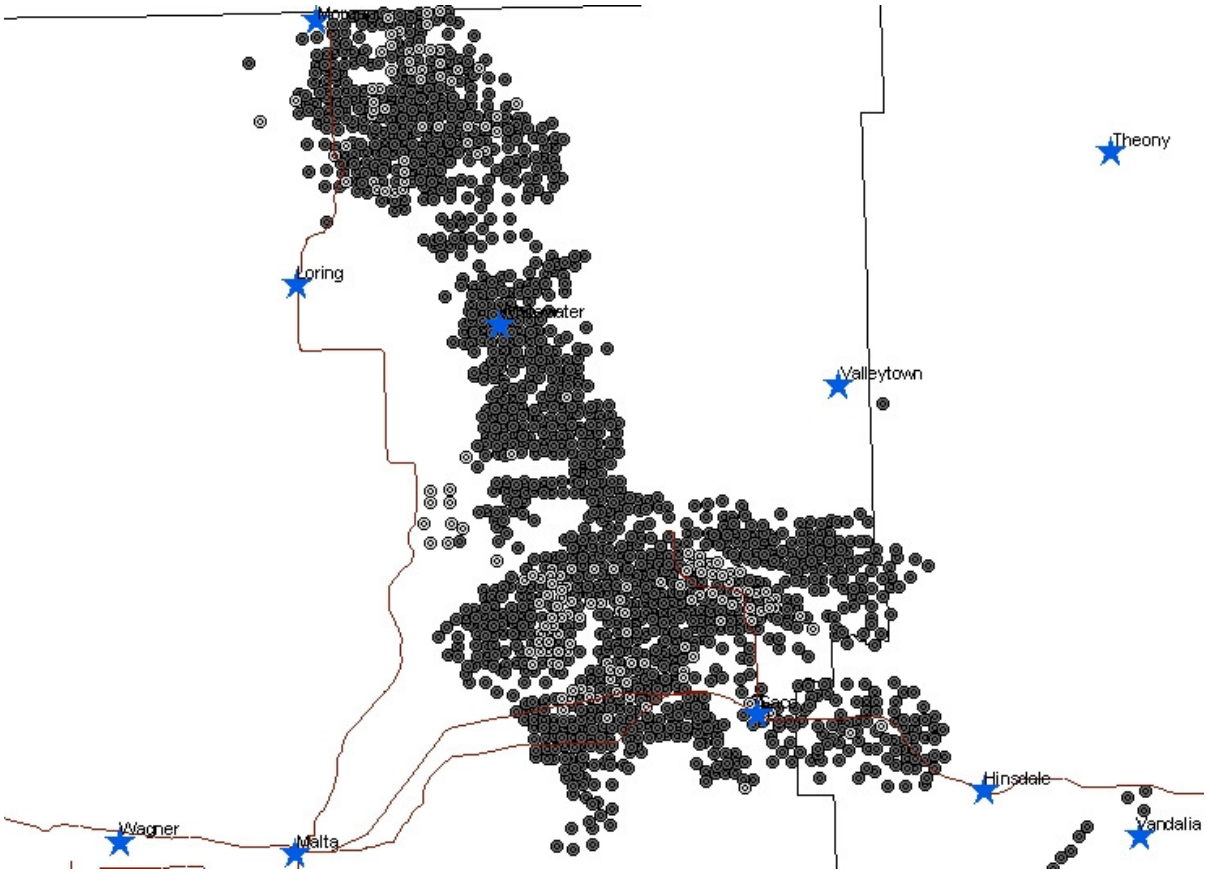
Baker - producing wells
Lighter shade are wells online since 2001



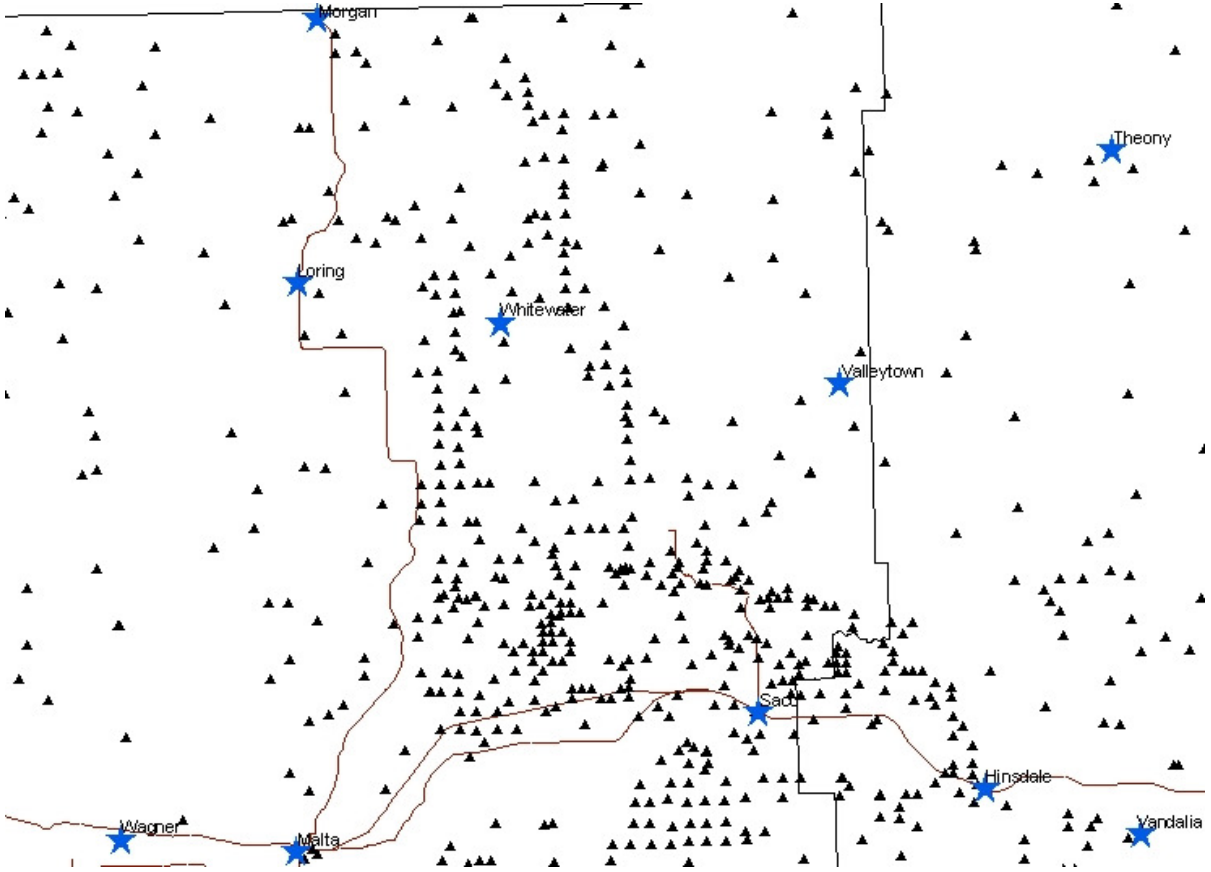
Baker - plugged and approved wells



Phillips County - producing wells
Lighter shade are wells online since 2001



Phillips County - plugged and approved wells



Proposed oil or gas operation on state or private land with state or private minerals

- 1+ acres disturbed
  - Storm Water Permit Clean Water Act 75-5-401; MCA (DEQ)
- Discharge dredge or fill to waters; altering beds or banks
  - Army Corps of Engineers Form 404 and or Form 310 (Conservation District)
    - Form 401 Clean Water Act Certify complies with state regulations (DEQ)
- Air Pollutants
  - Clean Air Act Title 75, Chapter 2; MCA (DEQ)
  - Permit to vent natural gas 36.22.1221; ARM 82-11-121; MCA (MBOGC)
- Groundwater production
  - CBM Reasonable mitigation offer to nearby water right holders 82-11-175
- Water disposal
  - Discharge to Surface Water
    - Pollutant Discharge Elimination System MPDES (DEQ) 75-5-304, 75-5-401; MCA
      - Voluntary bonds Water Quality Act permits DEQ 75-5-405; MCA
  - Reinjection
    - MBOGC permit (Safe Drinking Water Act) 36.22.1402; ARM 82-11-111; MCA
  - Holding pond
    - Form 23 MBOGC 82-11-111; MCA (36.22.1227 ARM)
      - Larger than 50 acre feet
        - Dam certification DNRC 85-15-209; MCA
  - Beneficial use water
    - Beneficial Use Permit Form 600 DNRC 85-2-302 et. seq, 85-2-402 MCA
- Well spacing conforms to rule & 1 per section (gas) 36.22.702 ARM
  - MEPA Analysis (Includes analysis of historical and biological features) Title 75, Chapter 1 MCA
- 2 plus wells per section (CBM)
  - Plan of Development MBOGC
    - MEPA Analysis (Includes analysis of historical and biological features) Title 75, Chapter 1 MCA
- Gravel operation
  - Open Cut Mining Act 82-4-401 et. seq; MCA (DEQ)
- Off-site waste management 75-10-214; MCA
  - Solid Waste Management 75-10-201; MCA (DEQ)
- Bonding "reasonable bond" 82-11-123(5); MCA
  - Up to $100k for multiple wells 36.22.1308; ARM
- Surface owner notification At least 10 days before drilling commences 82-10-503 MCA
  - Surface damage agreement 82-10-504
- Weed Control (Local Weed District)
- Reclamation Restore surface to previous grade; productive capability 82-11-123; MCA
  - Reclamation & Development Grants Program (Up to $600k per biennium) 90-2-1113; MCA
  - Abandoned well; refusal to reclaim
    - Oil & Gas Production Damage Mitigation Account 82-11-161; MCA
  - Unpaid CBM damage to private water right or private land
    - Up to $50,000 (after 6/30/11) CBM Protection Act 76-15-905 MCA (Conservation Districts)

NOTICE

This flow chart is designed to give a broad overview - and serve as a starting point for discussion - of some of the regulatory procedures that guide conventional oil and gas operations as well as those related to coal bed methane development.

It is not an inclusive list, nor does it attempt to include the intricacies of some of these procedures.

- Joe Kolman, Legislative research analyst

Proposed Oil or Gas operation on federal, state or private land with federal minerals

Pursuant to 1987 agreement, MBOGC accepts for the record all permits to drill for federal minerals in Montana

BLM Application for Permit to Drill (Includes NEPA analysis)

- Tribal Consultation
- Endangered Species Act USFWS biological opinion
- Historic Preservation Act 36CFR800 (MT Historic Preservation Office)

Discharge dredge or fill material to waters or alter beds or banks

- Army Corps of Engineers Form 404 and or Form 310 Conservation District
  - Form 401 Clean Water Act Certify complies with state regulations (DEQ)

1+ acres disturbed

- Storm Water Permit Clean Water Act 75-5-401; MCA (DEQ)

Air Pollutants

- Clean Air Act Title 75, Chapter 2; MCA (DEQ)

Groundwater Production

- CBM Reasonable mitigation to nearby water right holders (BLM policy)

Disposal of produced water Onshore Oil/Gas Order #7 (Applicable state/federal permits)

Discharge to Surface Water

- Pollutant Discharge Elimination System 75-5-304, 75-5-401; MCA MPDES (DEQ)
  - Voluntary bonds Water Quality Act permits DEQ 75-5-405 MCA

Reinjection

- MBOGC or EPA permit (Safe Drinking Water Act) 36.22.1402; ARM 82-11-111; MCA

Holding pond

- Non-federal surface
  - Form 23 MBOGC 82-11-111; MCA (36.22.1227 ARM)
    - Larger than 50 acre feet
      - Dam Certification 85-15-209; MCA DNRC
- Federal surface
  - Larger than 50 acre feet
    - BLM coordinates with MT Dam Safety for certification/inspection

Beneficial use water

- Beneficial Use Permit Form 600 85-2-302 et. seq, 85-2-402 MCA DNRC

Weed Control (Local Weed District)

Reclamation "ecosystem reconstruction" (Proposed definition in Gold Book version IV) as cited in conditions for approved plan of development

- Bond At least: $10,000 ; or $25,000 statewide; or $150,000 nationwide (43CFR3104 and 36CFR228E)
  - Split estate
    - Surface owner agreement/Bond minimum $1,000 (43CFR3814)
      - Surface owner or lessee holds right to appeal (43CFR3814)
- Unpaid CBM damage to private water right or private land
  - Up to $50,000 (after 6/30/11) CBM Protection Act 76-15-905 MCA (Conservation Districts)

Off-site waste management 75-10-214; MCA

- Solid Waste Management 75-10-201 MCA

NOTICE

This flow chart is designed to give a broad overview - and serve as a starting point of discussion - of some of the regulatory procedures from various agencies that guide conventional oil and gas operations as well as those related to coal bed methane development.

It is not an inclusive list, nor does it attempt to include the intricacies of some of these procedures.

- Joe Kolman, Legislative research analyst

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

April 2, 2003

In Reply Refer To:
3100/3200 (310) P
EMS TRANSMISSION 04/03/2003

Instruction Memorandum No. 2003-131

Expires: 09/30/2004
To: All Field Officials and Washington Office (WO-300) Group Managers
From: Director
Subject: Permitting Oil and Gas on Split Estate Lands and Guidance for Onshore Oil and Gas Order No. 1
Program Area: Oil and Gas Operations and Adjudication

Purpose: This Instruction Memorandum (IM) clarifies the policy, procedures and conditions for approving oil and gas operations on split estate lands (that is, lands involving private or state surface overlying federal minerals). Oil and gas operations include Applications for Permit to Drill (APD) on oil and gas leases, and Sundry Notices (SN). The purpose of this IM is to clarify that in the case of split estate land, one (1) bond is required for oil and gas operations under 43 CFR 3104, and a second bond is required to satisfy Section 9 of the Stock Raising Homestead Act of December 29, 1916, (SRHA) (43 U.S.C. 299) under 43 CFR 3814 if no agreement between the surface owner and lessee or operator can be reached. The Bureau of Land Management (BLM) also recognizes its national policy of coordination and cooperation among the BLM, federal lessees or their operators and private surface owners on split estate lands.

Policy/Action: BLM will not consider an APD or SN administratively or technically complete until the federal lessee or its operator certifies that an agreement with the surface owner exists, or until the lessee or its operator complies with Onshore Oil and Gas Order No. 1. Compliance with Onshore Oil and Gas Order No. 1 requires the Federal mineral lessee or its operator to enter into good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas, or payment in lieu thereof, to compensate the surface owner for loss of crops and damages to tangible improvements, if any. The lessee or its operator shall include as part of the APD or SN, where surface disturbance will occur on the private surface, the surface owner's name, contact address, telephone number, and any other relevant and necessary contact information, if known. The APD or SN shall also

include a statement by the federal lessee or its operator that it has obtained one of the following:

(1) a surface owner agreement for access to enter the leased lands,
(2) a waiver from the surface owner for access to the leased lands,
(3) an agreement regarding compensation to the surface owner for damages for loss of crops and tangible improvements, or

(4) in lieu thereof, an adequate bond, sufficient in amount, to secure payment for loss of damages to crops and tangible improvements (See Attachment 1, Self-Certification Statement from Lessee/Operator and Surface Owner Identification Form).

Prior to the approval of any APD or SN, where surface disturbance will occur on the private surface, the authorized officer will ensure compliance with these requirements.

If a good-faith effort by the federal lessee, its operator or representatives has not produced an agreement with the surface owner as described in options (1), (2), or (3) above, the authorized officer of the BLM will require an adequate surface owner bond in an amount sufficient to indemnify the surface owner against the reasonable and foreseeable damages for loss of crops and tangible improvements from the proposed operations. Crops include those for feeding domestic animals, such as grasses, hay, and corn, but not plants unrelated to stockraising. Tangible improvements include those relating to domestic, agricultural and stockraising uses, such as barns, fences, ponds or other works to improve the utilization of water, but not those associated with nonagricultural development. This surface owner bond is not part of the bond obligations under 43 CFR 3104. If the surface owner objects to the sufficiency of the bond under 43 CFR Subpart 3814, the authorized officer for BLM will determine the sufficiency of the bond needed to indemnify the surface owner for the reasonable and foreseeable damages. Such a bond must be provided on Form 3814-1 (See Attachment 2, Bond for Mineral Claimants, OMB No. 1004-0110).

In the context of the bonding for reasonable and foreseeable surface damages to crops and tangible improvements from the proposed operations, BLM has prepared guidance for the federal lessee and its operator. The guidance is contained in Attachment 3 (Bond Processing Directions) which identifies what a Subpart 3814 bond is, the form of the bond, acceptable sureties and the approval and appeal procedures for the amount and sufficiency of the bond. In the instances where the lessee or its operator cannot reach agreement with the surface owner and provides a surface owner bond, the federal lessee or its operator must provide the BLM the original bond and evidence of service of process of a copy of the bond on the surface owner, and evidence that the surface owner was notified of its right to object to the sufficiency of the bond in accordance with the procedures under 43 CFR 3814. After this evidence is provided, the BLM will independently notify the surface owner, in writing, of its rights under the procedures regarding protests and appeals to the sufficiency of the bond. The 3814 bond will be released after compensation of damages to crops and tangible improvements to the surface owner has occurred and the mineral lessee or operator requests release of the bond. BLM will make a reasonable effort to contact the surface owner and confirm that compensation has been received prior to release of the bond.

On-site visits with the lessee for the purposes of planning the development of the oil and gas resources on the lands are an important opportunity for coordination and cooperation with private surface owners. When scheduling on-site visits with the lessee for the purposes of planning the development of the oil and gas resources, the BLM will invite the surface owner to participate in the on-site visits conducted on their land. Within the context of the 15-days specified in Onshore Oil and Gas Order No. 1, the BLM will make a good-faith effort to schedule the on-site visit at a time convenient to the surface owner and the federal lessee or its operator.

The Surface Owner Agreement between the surface owner and the lessee or its operator is not to be submitted as part of the APD or SN, since it may contain confidential information regarding the agreement between the surface owner and the lessee or operator. However, a completed self-certification statement (Attachment 1) must be part of the application package. The surface owner can at the time of the on-site visit request that specific items be made part of the Surface Use Program, which is described in Onshore Oil and Gas Order No. 1. The authorized officer may include those conditions in the Surface Use Program if the authorized officer deems them beneficial to the development of the lease and consistent with conditions of approval that BLM would employ on the public lands it manages. Those conditions, if they are part of the Surface Use Program, become enforceable under the APD or SN. Non-compliance with the Surface Use Program by the lessee or its operator may result in an incident of non-compliance and assessments under the Oil and Gas Leasing Reform Act of 1987. Relief from non-compliance with conditions of the Surface Owner Agreement that are not part of the APD or SN cannot be obtained by the same process.

Background: The Bureau administers lands that are referred to as split estate on which the surface of the land has been patented, while the mineral interests are retained by the United States. Under the Mineral Leasing Act of 1920, the United States grants the right to develop the oil and gas resources to third parties. Onshore Orders have the force and effect of Departmental regulations when those orders were adopted during the Notice and Comment procedures of 5 USC 553. Onshore Oil and Gas Order No. 1 – Approval of Operations on Onshore Federal and Indian Oil and Gas Leases 48 FR 48916 (1983), requires that lessees or their operators enter into access agreements with private surface owners. In the event that there is no agreement between the surface owner and the lessee or operator, the lessee or operator may comply with provisions of 43 CFR 3814. Therefore, this order extends the requirement of 43 CFR 3814 to all split estate lands. This IM reemphasizes 43 CFR 3814 extension to all split estate lands.

Patents issued under the SRHA reserve coal and other minerals, including oil and gas. These patents provide for the right of a mineral entrant to prospect for, mine and remove reserved minerals. They also provide that any qualified mineral entrant "shall have the right at all times to enter upon the lands ... provided he shall not injure, damage, or destroy the permanent improvements ... and shall be liable to and shall compensate the entryman or patentee for all damages to crops on the land..."

Federal lessees and operators have the right to extract oil and gas from reserved mineral deposits on such patented land, and may use as much of the surface as is reasonably required for all purposes incident to the "mining or removal" as long as one of the four following conditions is met:

(1) Surface Owner Agreement;

(2) Written consent or waiver for access to the leased lands is obtained from the private surface owner;

(3) Payment for loss or damages to crops and other tangible improvements; or

(4) Execution of a good and sufficient bond or undertaking to the United States, in an amount not less than $1,000.

Since at least 1990, Bureau policy considered a SRHA entryman or patentee fully protected under the terms of the standard oil and gas lease bond, which is required before any surface disturbing activities can be authorized. State offices were directed to release any SRHA bonds so long as the coverage under an acceptable oil and gas bond was in place. In 2000, the Wyoming State Office requested information from the Solicitor, Rocky Mountain Region, on whether BLM needed to require two bonds, one under 43 CFR 3104 covering oil and gas operations and one under 43 CFR 3814 to satisfy Sec. 9 of the SRHA. The Assistant Regional Solicitor concluded that, given the regulations and in the absence of written consent/waiver or agreement, two bonds were required. The Regional Solicitor's memorandum (See Attachment 4) was reviewed by the Solicitor and Washington Office leasing staff. The BLM is in agreement with the regional Solicitor's conclusions. BLM's prior guidance, contained in Bureau Handbook H-3104-1, concerning the use of 3814 bonds is hereby rescinded.

Time Frame: This IM is effective immediately.

Budget Impact: Implementation of the new policy in this IM can be accommodated under existing budget allocations.

Manual/Handbook Sections Affected: These requirements will be incorporated into the updated versions of BLM Manual 3160-1, BLM Handbook H-3104-1, and Onshore Oil and Gas Order No. 1.

Coordination: This IM was coordinated with the Office of the Solicitor.

Contact: For questions, call Jim Burd at (202) 452-5017; or for issues specific to adjudication of bonds call Jay Douglas, at (202) 452-0336.

Signed by:
Authenticated by:
Kathleen Clarke
Barbara J. Brown
Director
Policy & Records Group, WO-560

4 Attachments:
1- Self-Certification Statement from Lessee/Operator (1 p)
2- Form 3814-1 Bond for Mineral Claimants (2 pp)
3- Bond Processing Directions (4 pp)
4- Rocky Mountain Regional Solicitor's Opinion, March 2, 2000 (5 pp)

SELF-CERTIFICATION STATEMENT
FROM LESSEE/OPERATOR

SURFACE OWNER IDENTIFICATION

Federal or Indian Lease No. _____

I hereby certify to the Authorized Officer of the Bureau of Land Management that I have reached one of the following agreements with the Surface Owner; or after failure of my good-faith effort to come to an agreement of any kind with the Surface Owner, have provided a bond and will provide evidence of service of such bond to the Surface Owner:

1) _____ I have a signed access agreement to enter the leased lands;

2) _____ I have a signed waiver from the surface owner;

3) _____ I have entered into an agreement regarding compensation to the surface owner for damages for loss of crops and tangible improvements.

4) _____ because I have been unable to reach either 1), 2), or 3) with the surface owner, I have obtained a bond to cover loss of crops and damages to tangible improvements and served the surface owner with a copy of the bond.

Surface owner information: (if available after diligent effort)

Surface Owner Name: _____

Surface Owner Address: _____

Surface Owner Phone Number: _____

Signed this _____-- day of _____-, 200__.

_____
(Name of lessee/operator)
_____
___

I (Surface Owner) accept _____ do not accept _____ the lessee or operator=s Surface Owner Agreement under 1, 2, or 3 above.

Signed this _____-- day of _____-, 200__.

_____
(Signature of Surface Owner if an agreement has been reached)

Form 3814-1
(March 1996)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

STOCKRAISING HOMESTEAD ACT
BOND FOR LANDS UNDER LEASE OR SALES CONTRACT

Act of December 29, 1916 (39 Stat. 862), as amended;
Act of June 17, 1949 (63 Stat. 201); Act of June 21, 1949 (63 Stat. 215);
Act of April 16, 1993 (107 Stat. 60)

FORM APPROVED
OMB NO. 1004-0104
Expires: May 31, 1999

Bond Serial Number

Homestead Patent Number

KNOW ALL MEN BY THESE PRESENTS, That _____
(Give full name(s) and address(es))

☐ citizen(s) of the United States, or ☐ having declared (my) (our) intention to become citizen(s) of the United States, as principal(s), and _____
(Give full name(s) and address(es))

as sureties, are held and firmly bound unto the United States of America, for the use and benefit of the owner of the hereinafter-described land, whereof homestead patent has been issued pursuant to the Act of December 29, 1916 (39 Stat. 862), in the sum of _____ dollars ($ _____), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, and each and everyone of us and them, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the aforesaid principal(s) ha___ acquired from the United States the _____ deposits (together with the right to mine and remove the same) situe, lying and being within the _____

of Section _____, Township _____, Range _____ Meridian, _____ State, and whereas Homestead Patent Number _____ has been issued at the _____ State Office, the surface of said above-described land, under the provisions of said Act of December 29, 1916 are now owned by: _____

NOW, THEREFORE, If the above-bounden parties or any of them, or their successors and assigns, or the heirs of any of them, their executors or administrators, upon demand, shall make good and sufficient recompense, satisfaction and payment, unto the said owner, his heirs, executors or administrators, or successors and assigns, for all damages to crops or tangible improvements upon said homesteaded land or to the value of said land for grazing as the said owner shall suffer or sustain or a court of competent jurisdiction may determine and fix in an action brought on this bond or undertaking, by reason of the mining and removing by the principal(s) of the above-designated mineral deposits from said described land, or occupancy or use of said surface, as permitted to said principal(s) under the provisions of said Act of December 29, 1916, as amended, by _____

_____, then this obligation shall be null and void; otherwise and in default of a full and complete compliance with either or any of said obligations, the same remain in full force and effect.

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.,

(Continued on reverse)

Attachment 2-1

Signed this _____ day of _____ , 19 _____ , in the presence of:

_____	_____
(Signature of Witness)	(Signature of Principal)
_____	_____
(Address of Witness)	(Address of Principal)
_____	_____
(Signature of Witness)	(Signature of Surety)
_____	_____
(Address of Witness)	(Address of Surety)

If this bond is executed by a corporation, it must bear the seal of the corporation

The Paperwork Reduction Act of 1980 *(44 U.S.C. 3501, et seq.)* requires us to inform you that:

Information is being collected pursuant to the law *(Section 9 of the Act of December 29, 1916, as amended, 39 Stat. 864, 107 Stat. 60; 43 U.S.C. 299).*
Information is used to establish financial responsibility for surface disturbance incurred on a Stock Raising Homestead *(SRH)* 43 CFR 3814.1.
Response to this request is required to obtain a benefit under provisions of Section 9 of the Act of December 29, 1916, *as amended, 39 Stat. 864, 107 Stat. 60; 43 U.S.C. 299).*

Public reporting burden for this form is estimated to average 8 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management, Bureau Clearance Officer (DW-101) Denver Federal Center, Building 40, P.O. Box 25047, Denver, CO 80225-0047 and the Office of Management and Budget, Paperwork Reduction Project (1004-0104), Washington, D.C. 20503.

Attachment 2-2

BOND PROCESSING DIRECTIONS

General:

For patents issued subject to the provisions of the Stock-Raising Homestead Act (SRHA) of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), mineral entrymen may need to file a bond with the Bureau of Land Management in order to mine and remove the deposits underlying the private surface. Onshore Oil and Gas Order No. 1, extends these provisions to all split estate situations. For oil and gas lessees and operators, such activities include those necessary or incidental to carry out exploration, development or production. A bond is required when the mineral entryman is unable to secure a written consent or waiver or enter into an agreement to pay compensatory damages. The right of the mineral entryman to enter, reenter and occupy as much of the surface as is required for activities reasonably incidental to extraction and removal of the mineral deposits is a specific provision of Sec. 9 of the SRHA. Because the mineral estate is considered the dominant estate, any other type of patent which reserves any portion of the mineral estate to the United States is deemed to include this right of entry. The SRHA also provides that the mineral entryman shall not injure, damage, or destroy permanent improvements of the homestead entryman or land owner and shall be liable to and shall compensate the homestead entryman or land owner for all damages to the crops on the land. (See 43 U.S.C. 299(a) as implemented by 43 CFR 3814(c)). The BLM encourages its lessees to communicate and cooperate with the landowner to obtain their consent to the development and extraction of federal minerals. When those efforts fail, a bond will be required.

When is a 3814 bond required?

A 3814 bond shall be required whenever a lessee/operator files an Application for Permit to Drill (APD) and the lessee/operator fails to include a copy of consent or waiver signed by the entryman/land owner; or when the lessee/ operator fails to include certification of an agreement to pay compensatory damages properly executed by both the lessee/operator and the entryman/land owner.

An increase to a 3814 bond shall be required whenever a lessee/operator files a Sundry Notice (SN), if the SN expands the area of private surface disturbance and the loss to crops or permanent improvements increases.

Can the 3814 bonding requirement be met by increasing the lessee/operator=s oil and gas lease bond?

No. Departmental regulations at 43 CFR 3814.1(c) state that, in lieu of a consent/waiver or agreement, a bond on Form 3814 of no less than $1,000 shall be required. The Secretary of the Interior (and any of his or her designees) is without authority to disregard his or her own duly promulgated regulations on the SRHA.

Can the 3104 bonding requirement be met by a 3814 bond?

No. Departmental regulations at 43 CFR 3104.1(a) state that prior to any surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator, shall submit an individual, statewide or nationwide bond of no less than the minimum amount for such bond to assure BLM that all lease obligations will be performed. The 3814 bond does not cover plugging and abandonment, reclamation or compliance with lease terms.

What form must be used to file a 3814 bond?

A Form 3814 Mineral Claimants Bond shall be used for all bonds submitted under 43 CFR 3814.1.

What is the amount of a 3814 bond?

A 3814 bond shall not be less than $1,000. This is the minimum, not the maximum amount of the bond. The amount shall be sufficient to indemnify the entryman or landowner for projected loss of crops and damage to tangible improvements and will be determined by the field office manager only if the surface owner objects to the bond amount. The authorized officer shall take into account the projected area of disturbance, the probable life of the well or wells needed to develop the oil and gas, and an average annual inflation rate of 5 percent.

Where is a 3814 bond filed?

A 3814 bond must be filed in the proper State Office. It shall be entered into the Automated Bond and Surety System within 5 days of receipt and maintained of record in the appropriate lease casefile. The State Office fluid minerals bond coordinator will promptly notify the appropriate field office of the filing, whether the bond is acceptable on its face and that any additional information required by the regulations has also been filed. The authorized officer must verify the bond amount as sufficient in case of protest. The acceptance decision cannot be written before the end of the 30-day protest period. The protest period begins when the entryman/land owner receives a copy of the bond. A copy of the acceptance decision will be sent to the lessee/operator, the landowner (by certified mail) and to the field office (by electronic mail).

A copy of the bond must be served on the entryman/land owner by the lessee/operator. A copy of the certified mail card showing receipt and any accompanying letter or material must be sent to the field office authorized officer. The APD or Sundry Notice is not complete until the authorized officer receives this copy, all else being regular.

What kind of surety is acceptable for a 3814 bond?

Under the regulations at 43 CFR 3814.1(c), two competent sureties (individuals) or a bonding company are the only acceptable sureties for a 3814 bond.

What does Acompetent surety@ mean?

A competent surety is one that is financially capable of paying the face amount of the bond. Regulations at 43 CFR 3814.1(c) require that, if individual sureties are used to secure the bond, the following also be filed at the same time with authorized officer B

(1) Affidavits of justification by the sureties;

(2) A certificate by a judge or clerk of the court of record, a U.S. district attorney, a U.S. commissioner, or a U.S. postmaster as to the identity, signatures, and financial competency of the sureties;

(3) Evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

The above-referenced materials shall be filed with the bond in the proper State Office. The State Office fluid minerals bond coordinator will send a copy of item No. 3 to the field office to document the well file.

If a corporate surety is used to secure the bond, it must be qualified to underwrite Government bonds. Qualified corporate sureties are listed on Department of the Treasury=s Circular 570. The circular is available online at B

http://fms.treas.gov/c570/c570.html

The circular is also published in the Federal Register on or about each July 1. Updates are also available online or through the Federal Register. You can sign up for automatic notification at the above-listed website.

What if the homestead entryman/landowner does not agree with the bond amount?

The entryman or landowner has 30 days from the date he or she receives a copy of the bond within which to object (protest) to the authorized officer. The bond will not be approved or accepted before the end of this period.

If a timely objection (protest) is received, the authorized officer will immediately evaluate it. If the authorized officer determines that the bond amount is not sufficient, a certified notice will be sent to the mineral entryman disapproving the bond, stating an acceptable amount, and stating the appeal rights of the mineral entryman.

If the authorized officer determines that the bond as filed is sufficient, the State Office fluid minerals bond coordinator will send a certified notice disallowing the objection (protest) to the homestead entryman or landowner and stating his or her appeal rights. The bond will be accepted concurrently. An electronic copy of this decision will be sent to the field office authorized officer to document the well file. The APD or SN shall also be approved concurrently, all else being regular.

What if the homestead entryman/landowner appeals the decision to disallow his or her objection?

The appeal must be filed in the proper State Office as that is the office that wrote the decision. The State Office fluid minerals bond coordinator will notify the field office authorized officer who will forward to the bond coordinator the originals of all appropriate materials. Appropriate materials include everything used to determine the bond amount, and all correspondence had with the lessee/operator or entryman/landowner about the bond.

The filing of an appeal does not stay approval of the APD or SN. Operations may continue during the pendency of the appeal.

What data entry must be made for a 3814 bond?

Data entry in the Automated Bond & Surety System will be sent by separate IM.

When will the 3814 bond be released?

The 3814 bond will be released after compensation of damages to crops and tangible improvements to the surface owner has occurred if any damages actually resulted from the lessee or operator's actions and the lessee or operator requests release of the bond. BLM will make a reasonable effort to contact the surface owner and confirm that compensation has been received prior to release of the bond.

United States Department of the Interior

OFFICE OF THE SOLICITOR

Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215
TELE. (303) 231-5353
FAX (303) 231-5363

March 2, 2000

Memorandum

To: Michael Madrid, Minerals/Lands Authorization Group,
Wyoming State Office, Bureau of Land Management

From: Lowell Madsen, Assistant Regional Solicitor

Subject: Bonding Requirements for Lands Patented Pursuant to the Stock-Raising Homestead Act

During John Kunz and my February 9, 2000, meeting with you and others from the Wyoming State Office and the Buffalo Field Office, we discussed several problems relating to the bonding requirements for oil and gas operations on lands patented under the Stock-Raising Homestead Act of December 29, 1916 (SRHA), 43 U.S.C. §§ 291-301. One of the problems arises from the directive in Instruction Memorandum No. WY-99-57 to use a single oil and gas bond issued pursuant to 43 C.F.R. § 3104, a 3104 Bond, to cover standard oil and gas operations as well as the compensatory damage provisions found in Section 9 of the SRHA. John and I were asked to determine whether the BLM and an oil and gas operator could agree to use two separate bonds, a 3104 Bond, to cover standard oil and gas operations and a 3814 Bond to satisfy the bonding requirements of Section 9 of the SRHA. It is our opinion that there is nothing in the relevant statutes or regulations to prevent the BLM from doing so. Indeed, the regulations, as currently constituted, require the use of the two bonds.

Section 9 of the SRHA provides that a person who has acquired from the United States the right to mine and remove the minerals reserved to the United States in lands patented pursuant to that Act may re-enter and use so much of the surface as may be required for all purposes reasonably incident to the mining and removal of the minerals. However, prior to re-entry, the person who has the right of re-entry must first (1) secure the written consent of the surface owner; or (2) reach an agreement with the surface owner as to the amount that will be paid to compensate for damages to crops or other tangible improvements that will result from mining and removing the reserved minerals; or (3) produce a good and sufficient bond to insure payment of damages

to crops or tangible improvements of the surface owner. 43 U.S.C. § 299. [1]

The regulation 43 C.F.R. § 3814.1(c) (1998) provides that the bond required by Section 9 of the SRHA must be on Form 3814, a 3814 Bond. [2] This regulation has not been superseded or modified. The regulations do not provide, as they once did, that separate bonds for the protection of surface owners are no longer required. Nor is there anything in the current regulations authorizing the use of any other bond, such as a 3104 Bond, for that purpose. Indeed, according to the regulations in 43 C.F.R. Part 3104, such a bond would be inadequate.

A 3104 Bond does not cover damage to crops or other tangible improvements. A 3104 Bond covers only the plugging of wells, the reclamation of the leased lands, and the restoration of lands and surface waters. 43 C.F.R. § 3104.1(a) (1998). [3] Nor does it appear that a 3104 Bond can be modified by increasing its amount to cover damage to crops or other tangible improvements. "[I]n

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[1] The bond must be sufficient to cover damages resulting from the diminution of the value of the land for grazing purposes as well as the loss of crops and damage to tangible improvements. William and Pear Hayes, 101 IBLA 1101 (1988); William C. Hayes, et ux., 122 IBLA 68 (1992).

[2] The regulation 43 C.F.R. § 3814.1(c) (1998) provides that the "bond on Form 3814 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved." (Emphasis added.) Accordingly, only a properly executed bond on Form 3814 will satisfy the regulation, a regulation that is as binding upon the Department as it is upon those doing business with the Department. Vitarelli v. Seaton, 359 U.S. 535, 539 (1959); Chapman v. Sheridan Wyoming Coal Co., 338 U.S. 621, 629 (1950); Alamo Ranch Co., 135 IBLA 61 (1996).

[3] 43 C.F.R. § 3104.1(a) (1998) provides:

> The bond amounts shall be not less that the minimum amounts described in this subpart in order to ensure compliance with the act [Mineral Leasing Act of 1920], including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s). . . .

no circumstances shall it [a 3104 Bond] exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding." 43 C.F.R. § 3104.5 (1998).

Accordingly, a 3104 Bond cannot be substituted for a 3814 Bond. In the absence of surface owner consent or an agreement as to the amount to be paid in damages, an oil and gas operator who wishes to re-enter lands patented pursuant to the SRHA must provide a 3814 Bond as well as a 3104 Bond.

The regulations do not, however, require the filing of a 3814 Bond separate from the filings that are associated with an Application for Permit to Drill (APD). A 3814 Bond and a 3104 Bond must be a part of an APD filed in connection with oil and gas operations on lands patented pursuant to the SRHA.

An APD must be accompanied by "Evidence of bond coverage as required by the Department of the Interior regulations," 43 C.F.R. § 3162.3-(d)(3). Those regulations require that a 3814 Bond, together with evidence of service of a copy of the bond on the surface owner, must be filed with the BLM. 43 C.F.R. § 3814.1(c). Accordingly, the APD must be accompanied by a 3814 Bond.

The procedural rights allocated to a surface owner in 43 C.F.R. § 3814.1 are preserved in the regulations governing the submission and approval of an APD. The BLM cannot approve a 3814 Bond until after 30 days from the date of its receipt have expired. 43 C.F.R. § 3814.1(d). An APD cannot be approved until it has been posted for public inspection for at least 30 days after its receipt. 43 C.F.R. § 3162.3-1(g) and (h). Thus, the BLM cannot approve the 3814 Bond submitted with an APD for at least 30 days after it is filed with the BLM. During the 30-day waiting period, a surface owner may "object" to the approval of the 3814 Bond. 43 C.F.R. § 3814.1(d). During the 30-day posting period for an APD, the BLM is to consult with "interested parties," 43 C.F.R. § 3162.3-1(h), which would normally include a surface owner. A surface owner must be given an opportunity to appeal from a decision approving a 3814 Bond. 43 C.F.R. § 3814.1(d). If the BLM approves an APD, thereby rejecting a surface owner's objection to the sufficiency of a 3814 Bond, the surface owner has the right to have the approval decision reviewed pursuant to the regulations 43 C.F.R. §§ 3165.3 and 3165.4.

In view of the above, it is clear that Instruction Memorandum No. WY-99-57, which provides that, insofar as oil and gas activities are concerned, a separate 3814 Bond is no longer required if an

operator provides a 3104 Bond, is inconsistent with current regulations.

IM WY-99-57 relies upon two Interior Board of Land Appeals decisions, Coquina Oil Corporation, 41 IBLA 248 (1979), and Theo Gassin, 55 IBLA 257 (1981). When those decisions were issued by the IBLA, a departmental regulation specifically provided that "Separate bonds for the protection of surface owners are no longer required." 43 C.F.R. § 3104.2(d) (1979). That regulation was deleted when 43 C.F.R. Part 3100 was revised in 1983. See 48 Fed. Reg. 33662, July 22, 1983. [4] Because the regulation was deleted, both Coquina and Gassin were effectively overruled by the IBLA in Gary Maughan, 105 IBLA 206 (1988). [5]

In Maughan, the Board held that the regulations in effect when that decision was issued in 1988 did not provide that a separate bond was not required. 105 IBLA at 209. As the pertinent regulations in effect when Maughan was issued are the same as the current pertinent regulations, it follows that, as shown above, the current regulations do not provide that separate bonds are not required.

It should be noted that the regulation 43 C.F.R. § 3814.1(d) gives either a surface owner or a mineral developer 30 days within which to appeal to the "Director of the Bureau of Land Management" from a decision by an authorized officer regarding the adequacy or inadequacy of a proffered bond. The IBLA has held that such appeals are properly made to that Board rather than the Director. Brock Livestock Co., Inc., 101 IBLA 91, 97 n.6 (1988). The Board held:

> The regulation codified at 43 C.F.R. § 3814.1 was promulgated prior to the creation of this Board and describes an appeal procedure which is no longer in effect. Since none of the limitations upon Board jurisdiction enumerated at 43 C.F.R. § 4.410(a) apply, in this circumstance appeal is properly made to the Board.

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[4] There is nothing in the preamble to the regulations published in 1983, or in the preamble to the regulations currently in effect, published in 1988, to explain why the Department eliminated the regulation providing that separate bonds for the protection of surface owners were not required. See 48 Fed. Reg. 33653, July 22, 1983, and 53 Fed. Reg. 22820-21, June 17, 1988.

[5] On reconsideration, Maughan was modified in part on a point not relevant here. See Gary Maughan, 105 IBLA 210A (1989).

The Board also held that 43 C.F.R. § 4.21(a) would suspend the finality of the BLM's decision regarding the adequacy of a bond pending the appeal. 101 IBLA at 97. However, Brock involved a bond filed by a mining claimant. [5] It is our opinion that a decision regarding the adequacy of a 3814 Bond, which must be submitted by an oil and gas operator as a part of an APD on lands patented pursuant to the SRHA, is subject to review and appeal pursuant to the regulations in 43 C.F.R. Part 3165. The regulation 43 C.F.R. § 3165.4(c) provides that decisions issued under Part 3100 shall remain effective pending review unless the IBLA determines otherwise in response to a petition for stay.

To summarize, it is our opinion that one who wishes to conduct oil and gas operations on lands patented pursuant to the SRHA must, in the absence of a waiver or an agreement to pay damages, submit a good and sufficient bond on Form 3814 to insure the payment of damages to crops or other tangible improvement on the surface of the land in addition to the bond required by 43 C.F.R. Part 3104. It is also our opinion that a decision approving an APD over an objection by a surface owner that a 3814 Bond is inadequate will be in full force and effect pending appeal unless a stay is granted by the IBLA.

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[5] The 1916 Stock-Raising Homestead Act was amended by the Act of April 16, 1993, 43 U.S.C.A. § 299, which deals with the location of mining claims on lands patented under the 1916 Act.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division

BRIAN SCHWEITZER, GOVERNOR

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PO BOX 201601
HELENA, MONTANA 59620-1601

November 11, 2005

MEMORANDUM

TO: Joe Kolman, Research Analyst, Legislative Services Division

FR: Monte Mason, Minerals Management Bureau Chief
Trust Land Management Division

RE: HB790 Questions

Per your November 9, 2005 email, the following information may help clarify our process regarding surface agreements.

Operations on state oil & gas leases are governed by applicable statute, administrative rule and lease contract requirements. The Trust Land Management Division (TLMD) within the Department of Natural Resources and Conservation manages state school trust lands under the direction of the State Land Board. Oil and gas operations, whether on state or privately owned lands, are also regulated by the Montana Board of Oil and Gas Conservation (MBOGC). Review and approval of operations is subject to the Montana Environmental Policy Act.

Title 82, Chapter 10, Part 5, Montana Code Annotated, provides the scope of responsibilities an oil & gas operator has to the owner or tenant of the surface estate. A copy is attached. For operations on state-owned lands, TLMD administrative rules also provide guidance. ARM 36.25.217 addresses the responsibilities of our oil & gas lessee on state land:

> 36.25.217 OPERATIONS ON STATE LEASES (1) The lessee shall conduct all operations subject to such inspections as the department shall decide to make and shall carry out at the lessee's expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property. On the failure of the lessee to do so, the department shall have the right, together with other recourse herein provided, to enter on the property to repair damages or prevent waste at the lessee's expense.
>
> (2) In all operations on lands leased pursuant to these rules and regulations, the lessee shall use the highest degree of care and all proper safeguards to prevent pollution of earth, air or water by hydrocarbons or other pollutants, excepting that pollution which is allowed, if any, by these rules and regulations and the rules and regulations relating to oil and gas published by the oil and gas conservation division of the department. In the event of pollution, directly or indirectly caused by lessees operations on lands leased pursuant to these rules, lessee shall use all means at its disposal to recapture escaped hydrocarbons and other pollutants and shall be responsible for all damage to public and private properties, including bodies of water of any sort, whether above or below the surface of the earth.

(3) To minimize conflicts with the owner or lessee of the surface of the land leased, lessee hereunder shall:

(a) provide the surface owner or lessee with a plan for location of all facilities;

(b) consult with the surface owner or lessee regarding a reasonable location of access roads. The access roads must be located along section lines and existing roads to the fullest extent possible and they must disturb as little acreage as possible unless the surface owner agrees otherwise. In locating the roads, priority shall be given to minimizing interference with the surface owners or lessees operations. The lessee shall make just payment to the surface owner for all damage done by reason of his entry upon, and use and occupancy of, the surface of the land.

(4) When any oil or gas well drilling operation is commenced on land leased pursuant to these rules, any topsoil on affected lands shall be removed and stockpiled on the site. The lessee shall take all reasonable, necessary steps to insure the preservation of the stockpiled topsoil including a temporary vegetation cover to prevent erosion. At the completion of oil or gas recovery operations, and upon the final abandonment and completion of the plugging of any well, the lessee shall, unless the owner of the surface requests otherwise and executes a release to that effect, restore the surface of the location to its original contours as far as reasonably possible, redistribute the topsoil, and reseed the land with native grasses and/or native plants as prescribed by the department.

ARM 36.25.138 addresses the scope of our surface lessee's rights when an oil and gas lease operation is proposed:

36.25.138 LESSEE OR LICENSEE DAMAGE COMPENSATION REQUIREMENTS

(1) When the board or department issues a lease or license on property upon which a lease or license of a different type already exists, the existing lessee or licensee shall be compensated by the more recent lessee or licensee for damages to the crops, improvements or leasehold interest of said existing lessee or licensee. Lessees or licensees may not receive compensation for such damages in excess of the value of actual damages to the crops, improvements or leasehold interest of said existing licensee. Only in exceptional cases documented to and approved by the department may the lessee or licensee receive damages for natural resources or crops in excess of the annual rate that the lessee or licensee is making to the department for rental payments. If a lessee or licensee collects or attempts to collect an amount in excess of said actual damages, such action may constitute sufficient grounds for cancellation of the lease or license. The department may adjust the AUM's allocated to a grazing lease or license when there is issued a lease or license for another purpose and that other purpose interferes with the grazing on the state lease.

A State of Montana oil & gas lease is attached. Pertinent provisions from that lease contract are as follows:

28. SURFACE OWNER'S OR LESSEE'S RIGHTS--The lessee hereunder agrees to provide the surface owner and surface lessee with a plan for location of all facilities and consult with the surface owner and surface lessee regarding a reasonable location of access roads. In all operations on the land hereby leased, lessee agrees to interfere as little as possible with the use of the premises for any other purpose to which the same may be devoted by other persons to whom the land may have been leased or sold by the State. The lessee shall not drill any well upon the lands hereby leased, within two hundred feet (200') of any residence or barn now or hereafter erected thereon without the consent of the owner of such building. The lessee hereby agrees to make satisfactory adjustment with the owner or lessee of the surface, including the State of Montana, for damages sustained by such surface owner, the lessee, or the State of Montana by reason of the lessee's entry upon, use and occupancy of, the surface of the land. If amicable determination of damages cannot be made between such surface owner, lessee, or the State of Montana and the lessee hereunder, then, upon the agreement of the surface owner or lessee to enter into arbitration, the damages to be paid to the surface owner or lessee shall be fixed by a board of arbitrators of three persons, to be appointed as follows: one by the State of Montana or the owner or lessee of the surface who is claiming damages, one by the lessee hereunder, and the third by the two arbitrators so appointed. The lessee hereby agrees to make prompt payment of the damages awarded by such board of arbitrators.

In any case where the owner of the surface claims title under a "C" patent issued by the State of Montana, and demands that the Board fix, allow and pay the owner the reasonable value of any right of way established by the lessee hereunder, the Department shall charge the cost of fixing the amount of damages to

the lessee hereunder. The lessee hereunder shall pay the reasonable sum so fixed as damages to the Board, which will pay the surface owner.

A-1. Lessee shall notify and obtain approval from the Department's Trust Land Management Division (TLMD) prior to constructing well pads, roads, power lines, and related facilities that may require surface disturbance on the tract. Lessee shall comply with any mitigation measures stipulated in TLMD's approval.

A-2. Prior to the drilling of any well, lessee shall send one copy of the well prognosis, including Form 22 "Application for Permit" to the Department's Trust Land Management Division (TLMD). After a well is drilled and completed, lessee shall send one copy of all logs run, Form 4A "Completion Report", and geologic report to TLMD. A copy of Form 2 "Sundry Notice and Report of Wells" or other appropriate Board of Oil and Gas Conservation form shall be sent to TLMD whenever any subsequent change in well status or operator is intended or has occurred. Lessee shall also notify and obtain approval from the TLMD prior to plugging a well on the lease premises.

Issuance of this lease in no way commits the Land Board to approval of coal bed methane production on this lease. Any coal bed methane extraction wells would require subsequent review and approval by the board.

When a well is proposed on a state oil & gas lease, the lease requirements A-1 and A-2 are triggered. The oil & gas lessee submits a request for TLMD review, as the lessor. They also send a request for regulatory review and approval to the MBOGC. The reviews conducted by MBOGC and TLMD utilize the same well proposal information, but the reviews are for distinct purposes.

The MBOGC reviews the well proposal for proper design and engineering to ensure the operation is safe and protective of surface and groundwater resources, consistent with board requirements to protect correlative rights of other mineral owners, and justified for prudent development the resource (in other words to prevent the drilling of unnecessary wells).

Upon receipt of the request for review, the TLMD sends letters and related information to our oil & gas lessee, advising them of the field office contact that will be conducting the review. This information also advises of their obligation to consult and coordinate with the surface owner or lessee, and to repair, replace or compensate the surface owner/lessee for any actual damages. If we own the surface and if the surface is leased, we provide contact information to the oil & gas lessee. We also send a letter and related information to our surface lessee. Copies of these letters and related information are attached.

The Minerals Management Bureau within TLMD coordinates the review process with the field office. The bureau also reviews lease status and applicable regulatory spacing requirements to ensure other lease requirements are met – primarily lease status, ensuring the lease agreement covers the area and target formations, and that the proposed well is consistent with the lessee's obligation to diligently develop and protect our correlative rights as the mineral owner.

The field office land use specialist consults with both the oil & gas company and surface lessee to: 1) ensure communication and coordination among all parties; review the proposed operation and require modifications as appropriate to reasonably minimize surface impacts; 3) prepare the environmental review pursuant to MEPA; 4) ensure surface damage coordination and compensation has been addressed, and; 5) send site-specific stipulations to the Minerals Management Bureau for inclusion in the division's

approval letter. The end product from this review is submittal from the field office to the Minerals Management Bureau of an approved environmental assessment and summary memo recommending certain site-specific stipulations, as appropriate. The Minerals Management Bureau then prepares a letter authorizing the oil & gas lessee to proceed with the proposed well, subject to any stipulations contained in the letter. A copy of a typical approval letter is attached.

If you should have any questions, please contact me at either (406) 444-3843 or mmason@mt.gov.

Attachments:

- Surface Owner Damage and Disruption Compensation Act
- State of Montana Oil and Gas Lease
- Initial Letters to surface and oil & gas lessees
- Surface damage forms and information
- Sample approval letter

TITLE 82. MINERALS, OIL, AND GAS
CHAPTER 10. OIL AND GAS -- GENERAL PROVISIONS

Part 5. Surface Owner Damage and Disruption Compensation

82-10-501. Purpose -- legislative findings. (1) The purpose of this part is to provide for the protection of surface owners of land underlaid with oil and gas reserves while allowing for the necessary development of those reserves.

(2) To carry out the purpose described in subsection (1), the legislature finds that:

(a) it is necessary to protect the economic well-being of individuals engaged in agricultural production;

(b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with the use, agricultural or otherwise, of the surface of certain land; and

(c) owners of the surface estate should be justly compensated for use of their property and interference with the use of their property due to oil and gas development.

History: En. Sec. 1, Ch. 199, L. 1981.

82-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

(2) "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

(3) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

(4) "Oil and gas operations" means the exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to June 1, 1981, and the production operations directly related to the exploration or drilling.

(5) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

History: En. Sec. 2, Ch. 199, L. 1981.

82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice shall be given no more than 90 days and no fewer than 10 days before commencement of any activity on the land surface.

History: En. Sec. 3, Ch. 199, L. 1981; amd. Sec. 27, Ch. 526, L. 1983; amd. Sec. 1, Ch. 497, L. 1985.

82-10-504. Surface damage and disruption payments -- penalty for late payment. (1) (a) The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration shall be given to the period of time during which the loss occurs.

(c) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner shall be compensated by a single sum payment for harm caused by exploration only.

(d) The payments contemplated by this subsection (1) may only cover land directly affected by drilling operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption; no person may reserve or assign that compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.

History: En. Sec. 4, Ch. 199, L. 1981; amd. Sec. 2, Ch. 497, L. 1985; (2)En. Sec. 3, Ch. 497, L. 1985.

82-10-505. Liability for damages to property. The oil and gas developer or operator is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to property, real or personal, caused by drilling operations and production.

History: En. Sec. 5, Ch. 199, L. 1981.

82-10-506. Notification of injury. To receive compensation under this part, a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable man.

History: En. Sec. 6, Ch. 199, L. 1981.

82-10-507. Agreement -- offer of settlement. Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to 82-10-506, he shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer.

History: En. Sec. 7, Ch. 199, L. 1981.

82-10-508. Rejection -- legal action. If the person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained.

History: En. Sec. 8, Ch. 199, L. 1981.

82-10-509 through 82-10-510 reserved.

82-10-511. Remedies cumulative. The remedies provided by this part do not preclude any person from seeking other remedies allowed by law.

History: En. Sec. 9, Ch. 199, L. 1981.

State of Montana
OIL AND GAS LEASE

No. _____

THIS INDENTURE OF LEASE, entered into between the State of Montana, through its Board of Land Commissioners, hereinafter referred to as lessor, and the person, company, or corporation herein named, hereinafter referred to as lessee, pursuant to the provisions of Title 77, Chapter 3, Part 4, M.C.A., and all acts amendatory thereof and supplementary thereto, WITNESSETH:

1. GRANTING CLAUSE--The lessor, in consideration of the annual rentals herein stated, the receipt of which for the first year of this lease is hereby acknowledged, the royalties to be paid, and the covenants to be kept and performed by the lessee, hereinafter set forth, hereby grants, demises, leases and lets to the lessee, for the purpose of mining and operating for oil and gas, and of laying pipelines, building tanks, power stations, and other structures thereon necessary in order to produce, save, care for, dispose of and remove the oil and gas, all the lands herein described, as follows:

Date this lease takes effect:

Name of Lessee: Address:

Land Located in: County:

Description of land:

Total number of acres, more or less, , belonging to Grant.

Annual rental, payable each year in advance:

2. TERM AND HORIZONTAL SEGREGATION--This lease is granted for a primary term of ten years and so long thereafter as oil and gas in paying quantities shall be produced from the land, subject to all of the terms and conditions herein set forth; provided, however, that:

(a) The extended term of this lease shall apply only to those formations discovered, developed or drilled during the primary term of ten years, and the interest of the lessee in the premises herein described shall thereafter be limited to such formations.

(b) If oil and gas in paying quantities is discovered in an offset well on a contiguous section during the extended term of this lease in any formation in the zone between the deepest formation to which the lessee drilled during the primary term of this lease and the deepest formation in which oil or gas has been discovered on the leased premises, this lease shall terminate as to said zone unless, within 60 days after the completion of such offset well, the lessee shall commence operations to test such a formation.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

3. LEASE EXTENSION--The Board of Land Commissioners may grant reasonable extensions of the primary term of this lease upon a showing that lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this lease or is threatened with substantial economic loss due to litigation regarding this lease or another lease in the immediate area held by the lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

4. LAND DISPOSITIONS--The lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this lease. However, lessor agrees that sales, leases, or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this lease, and shall not interfere with the lessee's possession or rights hereunder.

5. RENTAL--The lessee shall pay to the lessor an annual money rental in the amount hereinabove stated being not less than one dollar and fifty cents ($1.50) for each acre of land held under this lease from year to year, provided, however, that the amount of such money rental so payable shall in no case be less than one hundred dollars ($100.00) per annum. The first year's rental must be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent lease year. Upon failure to make the rental payment, the lease terminates unless there is a well currently being drilled, a producing well, or a shut-in well approved by the Department of Natural Resources and Conservation, Trust Land Management Division (Department) on the lease. Rental paid for any year must be credited against any royalty that accrues during that year.

6. ROYALTY ON OIL--The lessee shall pay in money or in kind to the lessor at its option as hereinafter provided during the full term of this lease a royalty of 16.67%, free of all costs and deductions, on the average production of the oil from producing wells under this lease for each calendar month.

7. ROYALTY ON GAS--The lessee shall also pay in money or in kind to the lessor at its option as hereinafter provided during the full term of this lease, free of costs and deductions, a royalty on the gas produced from the wells under this lease whether the wells produce oil and gas or gas alone, of 16.67%.

8. SHUT IN GAS ROYALTY--The royalty on gas, including casinghead gas and all gaseous substances not sold or used off the premises, must be at the rate of $400 per lease each year or the amount of the annual rental provided in the lease, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as the leased lands contain a well capable of production in paying quantities and the requisite payment is made, the lease must be considered as a producing lease under the terms herein.

9. ROYALTIES BASED ON PRODUCTION--All royalties shall be calculated upon the total amount produced and saved under this lease exclusive of oil and/or gas used for light, fuel or operating purposes in connection with the work on the lands under the lease.

10. FULL PRODUCTION REQUIRED--All wells under this lease shall be so drilled, maintained and operated as to produce the maximum amount of oil and/or gas which can be secured without injury to wells and the aforesaid royalties shall be based and calculated on such full production of oil and/or gas.

11. ROYALTY PAYMENT--The lessee shall pay to the lessor in cash for such royalty oil and gas at the rate of the posted field price therefor existing on the day such oil or gas was run into any pipeline or storage tank to the credit of the lessee plus any bonus or other increase in price actually paid or agreed to be paid to the lessee.

12. IN-KIND OIL OR GAS--At the option of the lessor exercised not more frequently than once every thirty days by notice in writing the lessee shall deliver the State's royalty oil or gas free of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the State and connected with such wells. The lessee shall not be required to furnish storage for the State's royalty oil for more than thirty (30) days following the date of production thereof when a market therefor is available.

13. FAIR MARKET VALUE--In all cases where there is no posted field price for oil or gas produced under this lease, the payments in cash for the royalties payable hereunder shall never be less than the fair market value thereof, for oil, at the wells where produced on the day it is run into the pipeline or storage tanks, and for gas, at the well where produced on the day produced. It is agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease.

14. LIENS ON PRODUCTION--The lessor shall have a first lien upon all oil or gas produced from the lands leased hereunder, to secure the payment of all unpaid royalty and other sums of money that may become due under the terms herein.

15. POOLING AND UNITIZATION--Upon receiving the written consent of the lessor, the lessee shall have the right to commit the lands hereby leased to a pooling, unit, cooperative or other plan of development or operation with other State lands, Federal lands, privately-owned lands or Indian lands. Such agreements shall not change the percentage of royalties to be paid to the state from the percentages as fixed herein. Oil or gas produced from any lands included in such an agreement which encompasses the lands hereby leased are considered to be produced from the lands hereby leased.

16. FARM LOAN ACQUISITIONS--If the land under this lease is "mortgaged land" acquired by the State in connection with a mortgage given to the State as security for a loan and such mortgage land has been sold by the State subsequent to July 1, 1927, and prior to February 26, 1929, the lessee shall pay directly to the holder of such land under certificate of purchase or other contract, or deed from the State, a royalty of one percentum (1%) of the oil and gas produced from such land to be calculated on the same basis and in the same manner as the royalty to be paid to the State, but the said royalty of one percentum shall be deducted from the royalty to be paid to the State so that such one percentum royalty does not increase the total royalty to be paid under this lease, and if such mortgage land was sold by the State between March 15, 1935, and July 1, 1961, the lessee shall pay directly to the holder of such land under certificate of purchase or other contract or deed from the State, a royalty of six and one-fourth percentum (6¼%) of the oil and gas produced from such land to be calculated as hereinbefore specified.

17. DELAY DRILLING PENALTY--Unless this lease is surrendered, is terminated by lessee's failure to pay rentals when due, or is terminated by the Board of Land Commissioners because of the failure of the lessee to comply with the express and implied covenants of this lease, the Board of Land Commissioners may, in its discretion and as provided by law, cancel and terminate this lease upon the failure of the lessee (1) to commence within five (5) years of the effective date of this lease, drilling of at least one well upon the leased premises of such diameter and to such depth as may be necessary to make a reasonable test for oil and gas; or (2) pay in advance a delay drilling penalty of one dollar and twenty-five cents ($1.25) per acre for the sixth year of the lease in addition to the annual rental; or (3) pay in advance a delay drilling penalty of two dollars and fifty cents ($2.50) per acre per annum for the seventh through the tenth year of the lease in addition to the annual rental. The lessee shall notify the Department of the commencement of drilling of any well within five (5) days after the well is spudded in. The Board shall refund delay drilling penalties paid on a lease for any year in which the lessee commences drilling on that lease.

18. DRY HOLE CLAUSE--Following the termination of the fourth year of this lease, if the lessee drills a dry hole on the lease premises prior to discovery of oil or gas or if after discovery of oil or gas, production thereof in paying quantities ceases, the lease may be terminated by the Board unless the lessee (1) commences drilling of another well for oil and/or gas before the 7th year of this lease or second anniversary of the lease following completion of the well, whichever comes later, or (2) unless the lessee, on or before such anniversary date resumes payment of any delay drilling penalties imposed by the Board. For purposes of this lease "dry hole" is defined as a completed well which is not capable of producing oil and/or gas in paying quantities when completed.

19. DRILLING EXTENSION--If at the expiration of the primary term hereof oil or gas is not being produced from the lease premises in paying quantities, but the owner of the lease is then engaged in drilling on the premises for oil and gas, then the lease continues in effect so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term hereof, the lease continues in effect so long as oil or gas in paying quantities is being produced from the leased premises.

20. DUE DILIGENCE--Upon completion of a commercially productive oil or gas well upon the leased premises, the lessee shall proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive, or to such depth as may be necessary to economically test, develop and operate the deposits discovered.

21. OFFSET PROTECTION--The lessee shall commence promptly and diligently drill to completion all wells necessary on the lands under this lease in order to fairly offset commercially producing oil or gas wells on contiguous lands or pay a compensatory royalty.

22. WASTE PROHIBITED--In conducting all explorations, mining or drilling operations under this lease, the lessee shall exercise all reasonable care and precautions in order to prevent waste of oil and gas. The lessee shall also at all times use all reasonable care and precautions to prevent the entrance of water to the oil or gas bearing strata to the destruction or injury thereof.

23. LOGS REQUIRED--The lessee agrees to keep a correct log of each well drilled under this lease, showing the formations passed through, the depth at which such formation was reached, the thickness of each formation, the water-bearing formations and the character of water therein, the elevations to which the water rises, the number of feet of casing set in such well and where placed, its size and the total depth to which such well was drilled; and upon request, to file the log with the Department.

24. PROGRESS REPORTS REQUIRED--When called upon to do so, the lessee shall also file progress reports with the Department before the completion or abandonment of any well.

25. PRODUCTION REPORTS AND PAYMENT OF ROYALTY--The lessee further agrees on or before the last day of each month to make a report to the Department for operations covering the preceding calendar month, which report shall be in such form as the Department may prescribe and shall show the amount of oil or gas produced and saved during the preceding calendar month, the price obtained therefor, the total amount of all sales, whether any bonus or other increase in price was actually paid or agreed to be paid and such additional information as may be required. Such report shall be signed by the lessee or by some responsible person having knowledge of the facts contained therein. The report shall be accompanied by payment of the amount due the State as royalty for the month covered by the report where payment is required in money in place of oil or gas.

26. COMPLETION REPORTS REQUIRED--When the lessee is required by the rules of the Board of Oil and Gas Conservation to file a well completion report with that board, lessee shall file one copy of that report with the Department.

27. LESSOR'S RIGHT TO INSPECT--Representatives of the lessor shall at all times have the right to enter upon the granted premises and all parts thereof for the purpose of inspecting and examining the same, as well as supervising tests that they may deem necessary to ascertain the condition of the wells being drilled or about to be abandoned and gauging the production of producing wells. Representatives of the lessor shall also, at all reasonable hours, have free access to all books, accounts, records and papers of the lessee insofar as they contain information relating to the production obtained under this lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production hereunder.

28. SURFACE OWNER'S OR LESSEE'S RIGHTS--The lessee hereunder agrees to provide the surface owner and surface lessee with a plan for location of all facilities and consult with the surface owner and surface lessee regarding a reasonable location of access roads. In all operations on the land hereby leased, lessee agrees to interfere as little as possible with the use of the premises for any other purpose to which the same may be devoted by other persons to whom the land may have been leased or sold by the State. The lessee shall not drill any well upon the lands hereby leased, within two hundred feet (200') of any residence or barn now or hereafter erected

thereon without the consent of the owner of such building. The lessee hereby agrees to make satisfactory adjustment with the owner or lessee of the surface, including the State of Montana, for damages sustained by such surface owner, the lessee, or the State of Montana by reason of the lessee's entry upon, use and occupancy of, the surface of the land. If amicable determination of damages cannot be made between such surface owner, lessee, or the State of Montana and the lessee hereunder, then, upon the agreement of the surface owner or lessee to enter into arbitration, the damages to be paid to the surface owner or lessee shall be fixed by a board of arbitrators of three persons, to be appointed as follows: one by the State of Montana or the owner or lessee of the surface who is claiming damages, one by the lessee hereunder, and the third by the two arbitrators so appointed. The lessee hereby agrees to make prompt payment of the damages awarded by such board of arbitrators.

In any case where the owner of the surface claims title under a "C" patent issued by the State of Montana, and demands that the Board fix, allow and pay the owner the reasonable value of any right of way established by the lessee hereunder, the Department shall charge the cost of fixing the amount of damages to the lessee hereunder. The lessee hereunder shall pay the reasonable sum so fixed as damages to the Board, which will pay the surface owner.

29. ASSIGNMENTS--The lessee may assign this lease either in whole or as to any regular subdivision thereof, embracing not less than forty (40) acres, to any qualified assignee, providing that such assignment shall not be binding upon the State until it has been filed with the Department accompanied by the required fees. No assignment to two or more assignees will be approved until one of the assignees is designated to act as agent for the assignees.

30. RELINQUISHMENTS--The lessee shall have the right at the termination of any rental year, by giving at least thirty (30) days previous notice in writing to the Department, to surrender and relinquish any legal subdivisions of the land hereby leased and thereupon be discharged from any obligation not theretofore accrued as to the lands so surrendered and relinquished. When this lease terminates as to any portion less than the whole of the lands covered hereby, because of the lessee's failure to pay rental when due, lessee agrees to submit to the lessor, within thirty (30) days after such termination, a written surrender and relinquishment of those lands.

31. CANCELLATION--It is understood and agreed that the lessor hereby reserves the right to declare this lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of the lessee to fully discharge all the obligations provided herein, after written notice from the Board and reasonable time fixed and allowed by it to the lessee for the performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. The lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Board before the lease shall be declared forfeited or canceled. The provisions of this clause shall not in any way affect an automatic termination of this lease caused by lessee's failure to pay rental when due.

32. SURRENDER POSSESSION--Upon the termination of this lease for any cause the lessee shall surrender possession of the leased premises to the lessor subject to lessee's right to re-enter, hereby granted, at any time within six months after the date of such termination, for the purpose of removing all machinery, fixtures, improvements, buildings and equipment belonging to the lessee remaining upon the premises except casing in wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. It is hereby agreed that any succeeding lessee, or in the event there be no succeeding lessee, the lessor, wishing to have such property left permanently upon the premises, shall pay the reasonable value thereof, in cash, to the lessee, but if the succeeding lessee or the lessor, acting through its Board of Land Commissioners, shall be unable to agree with the lessee upon the reasonable cash value of such casing, equipment and apparatus, then the succeeding lessee or the lessor herein, as the case may be, shall pay in cash to the lessee hereunder, such sum as may be fixed as a reasonable price by a board of three appraisers, one of whom shall be chosen by the succeeding lessee or the State of Montana as the case may be, one by the lessee hereunder, and the third by the two chosen, and whose appraisal shall be reported to the respective parties, in writing, and is final and conclusive. If the lessee or succeeding lessee refuses to appoint an appraiser within fifteen (15) days of a request to do so by the Department, the Department may appoint an appraiser for the lessee or succeeding lessee. Unless the Department gives written authorization, the lessee may not remain in possession or manage the land and property formerly covered by the lease. During the time the lessee remains in authorized possession, the lessee shall be entitled to retain the same share of the products of the lands as inured to the lessee during the term of this lease. Should the lessor herein or any succeeding lessee not desire any of the lessee's property permanently left upon the premises, as provided in this paragraph, the lessee shall properly plug all non-producing wells and remove all of his property from the lands with reasonable diligence. If any of the property of the lessee is not removed from the leased premises within six months of the termination date of the lease as herein provided the same shall be deemed forfeited to the State of Montana and shall become its property.

33. COMPLIANCE WITH LAWS, RULES AND REGULATIONS—This lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. The lessee agrees to comply with all applicable laws, rules and regulations in effect at the date of this lease, particularly the Rules Governing the Issuance of Oil and Gas Leases on State Lands of the State of Montana. The lessee agrees to comply with all applicable laws, rules and regulations which may, from time to time, be adopted and which do not impair the obligations of this contract and which do not deprive the lessee of an existing property right recognized by law.

34. WARRANTY OF TITLE--It is understood and agreed that this lease is issued only under such title as the State of Montana may now have or hereafter acquire, and that the lessor shall not be liable for any damages sustained by the lessee, nor shall the lessee be entitled to or claim any refund of rentals or royalties theretofore paid to the lessor in the event the lessor does not have the title to the oil and gas in the leased lands. If the lessor owns a lesser interest in the leased lands than the entire and undivided fee simple estate in underlying oil and gas for which rental and royalty is payable, then the rentals and royalties herein provided shall be paid the lessor only in the proportion which its interest bears to the whole and undivided fee simple estate in the oil and gas for which royalty is payable.

35. LEGAL FEES--In the event lessor shall institute and prevail in any action or suit for the enforcement of any provisions of this lease, lessee will pay to lessor a reasonable sum for costs incurred on account thereof.

36. SPECIAL PROVISIONS:

SEE EXHIBIT "A"

37. EXECUTING PARTIES BOUND--All covenants and agreements herein set forth between the parties hereto shall extend to and bind their successors, heirs, executors and assigns.

IN WITNESS WHEREOF, the State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Montana Department of Natural Resources and Conservation, pursuant to the authority granted him by the Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the Board of Land Commissioners this ____ day of _____ _____.

_____
Lessee

_____

_____

_____
Address

_____
Director of the Department of Natural Resources
and Conservation

Exhibit "A" **[Example Lease]**

Stipulations

1. Lessee shall notify and obtain approval from the Department's Trust Land Management Division (TLMD) prior to constructing well pads, roads, power lines, and related facilities that may require surface disturbance on the tract. Lessee shall comply with any mitigation measures stipulated in TLMD's approval.

2. Prior to the drilling of any well, lessee shall send one copy of the well prognosis, including Form 22 "Application for Permit" to the Department's Trust Land Management Division (TLMD). After a well is drilled and completed, lessee shall send one copy of all logs run, Form 4A "Completion Report", and geologic report to TLMD. A copy of Form 2 "Sundry Notice and Report of Wells" or other appropriate Board of Oil and Gas Conservation form shall be sent to TLMD whenever any subsequent change in well status or operator is intended or has occurred. Lessee shall also notify and obtain approval from the TLMD prior to plugging a well on the lease premises.

   Issuance of this lease in no way commits the Land Board to approval of coal bed methane production on this lease. Any coal bed methane extraction wells would require subsequent review and approval by the board.

3. The TLMD will complete an initial review for cultural resources and, where applicable, paleontological resources of the area intended for disturbance and may require a resources inventory. Based on the results of the inventory, the TLMD may restrict surface activity for the purpose of protecting significant resources located on the lease premises.

4. The lessee shall be responsible for controlling any noxious weeds introduced by lessee's activity on State-owned land and shall prevent or eradicate the spread of those noxious weeds onto land adjoining the lease premises.

5. The definitions of "oil" and "gas" provided in 82-1-111, MCA, do not apply to this lease for royalty calculation purposes.

Note: The above lease stipulations are a part of every lease. Additional stipulations are added as appropriate based on the department's pre-lease review.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division

BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

SAMPLE SURFACE LESSEE LETTER

June 22, 2005

John S. Vassar
1401 6th Avenue West
Williston, ND 58801

RE: Summit Resources, Inc./True Oil Company
NWNW Section 16-T11N-R33E
Rosebud County, Montana

Dear Lessee:

The Department received notification that our oil and gas lessee intends to drill a well on the above referenced section. Your surface lease allows the Department to develop other resources on state land, including minerals such as oil and gas. However, you are entitled to receive compensation from the oil and gas lessee for any actual damages to your state surface lease. You will be contacted in the near future by the above referenced company or their agent regarding access on your state surface lease, including placement of roads, if any, across the surface lease to the drillsite. While the location of the drillsite may be limited by geologic, engineering or regulatory factors, related activities such as access routes or flowlines can often be coordinated to minimize impact to your state surface lease.

Your surface lease does not allow you to accept payments in excess of actual damages, or to charge for access on state land. However, the state oil and gas lease does not grant any access across non-state lands. A settlement form and information on calculation of surface damages is attached.

The oil and gas lessee will forward a copy of your damage settlement to the Department. Please contact our Area Land Office or me if you have any questions.

Sincerely,

Julie David, Supervisor
Mineral Leasing Section
Minerals Management Bureau

copy: Clive Rooney, Area Manager, NELO, DNRC, Lewistown, MT
Dan Dobler, Unit Manager, Havre Unit Office, DNRC, Havre, MT
Summit Resources, Inc., 717 17th Street, Suite 1500, Denver, CO 80202

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division

BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

SAMPLE OIL & LESSEE LETTER

June 22, 2005

Scott A. Kemmis
Contract Land Agent
Fidelity Exploration & Production Company
PO Box 1010
Glendive, Montana 59330-0131

RE: State of Montana Oil and Gas Lease #33,458-99
Township 3 South, Range 61 East
Section 36: All
Carter County, Montana
Montana State A-36-1-1A Well

Dear Lessee:

The Department received a letter and APD from River Gas Corporation requesting approval for a well on the above referenced state section. Enclosed is a copy of my letter to our surface lessee, Joseph T. Padden, advising of your responsibility to repair, replace or compensate the surface lessee for actual damages to their leasehold interest. The letter included the enclosed settlement form and information sheet on determining appropriate payment for actual damages for state surface lease activities. The surface lessee is not entitled to payments in excess of actual damages.

You will need to settle surface lessee damages and meet with our field office staff to settle state surface owner damage compensation. When the state is the surface owner, payment to the state is determined by calculating the difference between that paid to other surface owners in the area, less the amount paid to our surface lessee for actual damages to his leasehold interest. Forms are included for both surface lessee and state surface owner damage compensation.

I have requested an Environmental Assessment (EA) from our Havre Unit Office. It will depend on their workload and number of projects ahead of this request, as to how soon I will receive the EA. You need to notify our surface lessee and the Havre Unit Office before staking the well and work with them regarding the placement of any roads. Your contact is:

Dan Dobler, Unit Manager, Havre Unit Office, DNRC, 210 Sixth Avenue, P.O. Box 868, Havre, MT 59501-0868, telephone (406) 265-5236

As soon as I receive the EA from our field office, Monte Mason, Minerals Management Bureau Chief, will review the information, and then we can give approval for the well and let you know if there are additional stipulations. Please let us know if you have any questions.

Sincerely,

Julie David, Supervisor
Mineral Leasing Section
Minerals Management Bureau

Enclosure

copy: Clive Rooney, Area Manager, NELO, DNRC, Lewistown, MT
Dan Dobler, Unit Manager, Havre Unit Office, DNRC, Havre, MT
Terry D. Burns, River Gas Corporation, Tuscaloosa, AL

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division

BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

OIL AND GAS SURFACE DAMAGE PAYMENTS

The Agricultural and Grazing Lease entered into by the surface lessee reserves and allows for the state to issue mineral leases. Like surface leases, a mineral lease requires various payments to the state, and conveys to its lessee the right to utilize the surface land. However, the mineral lessee is required to compensate for actual damages to the surface lessee's crops, improvements or leasehold interest. Damage payments are to be reasonably based on actual damage. Collection by the surface lessee of higher amounts unrelated to damages is not allowed. ARM 36.25.138 specifically provides as follows:

> 36.25.138 LESSEE OR LICENSEE DAMAGE COMPENSATION REQUIREMENTS
>
> (1) When the board or department issues a lease or license on property upon which a lease or license of a different type already exists, the existing lessee or licensee shall be compensated by the more recent lessee or licensee for damages to the crops, improvements or leasehold interest of said existing lessee or licensee. **Lessees or licensees may not receive compensation for such damages in excess of the value of actual damages to the crops, improvements or leasehold interest of said existing licensee. Only in exceptional cases documented to and approved by the department may the lessee or licensee receive damages for natural resources or crops in excess of the annual rate that the lessee or licensee is making to the department for rental payments. If a lessee or licensee collects or attempts to collect an amount in excess of said actual damages, such action may constitute sufficient grounds for cancellation of the lease or license.** The department may adjust the AUM's allocated to a grazing lease or license when there is issued a lease or license for another purpose and that other purpose interferes with the grazing on the state lease. (History: 77-1-209, MCA; IMP, 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

The oil & gas lessee is obligated to repair, replace or compensate the surface lessee for actual damages. Following is a brief explanation of how actual damages are typically calculated for various surface activities.

Grazing Land: If activities are to occur which prevent the surface lessee from utilizing AUMs already paid for, they would be entitled to be compensated for those AUMs. If future carrying capacity of the state lease is significantly impacted, the Department would adjust the AUM rating of the state surface lease for future years. Therefore, the surface lessee would not require any reimbursement from the oil and gas company for future years.

Crop Land: If activities are to occur which destroy crops in the ground, the surface lessee would be entitled to be compensated for the amount of revenue they would have received for those acres of crop removed by the oil and gas lessee. If crops are planted on a rotating basis, and if the surface lessee has invested prep-work on a fallow area for next year's crop (i.e.

(continued on other side)

plowing, seeding, spraying, or fertilizing), they would be entitled to compensation for such costs on those acres removed by the oil and gas lessee. Crop-related compensation is commonly calculated by prorating your field costs to a per-acre amount for the acres actually impacted.

CRP Land: If activities are to occur which cause a readjustment in the CRP contract, the oil and gas lessee is responsible for paying any contract reimbursement required by the Federal government, as well as paying the surface lessee for any reduction in CRP payments they would have received under the current contract.

For all types of land, the oil and gas company is responsible to repair, replace, or compensate the surface lessee for any damage done to lease improvements, such as fences, culverts, cattleguards, stockwater developments, irrigation developments, etc. Any permanent or long-term loss of production due to surface activity on the lease will be adjusted out of the surface lease at the earliest possible time so that the surface lessee is not paying the State for a use that is not available on the state land. Other special circumstances may exist which merit discussion with the Department.

The surface lessee cannot charge a fee solely for the right to conduct activities on state land, since the oil and gas lessee is paying the State of Montana for that right. However, the state oil and gas lease does not, in any way, grant any access rights across non-state lands. If such access is desired by the oil and gas company, that is a separate issue between the adjacent landowner and the oil and gas company.

The Department recognizes that the amount of actual damage may be relatively small, such as for small wellsites on grazing land. As a practical matter, we recommend a minimum damage payment of $100.00 per wellsite. Payments are to be made on a one-time basis; long-term settlements over a period of years are not acceptable. It is our expectation that our oil and gas and surface lessees will work together to coordinate activities and minimize impacts. Any disputes regarding surface operations or damage payments should be referred to the appropriate Area Land Office for settlement.

DS-484
(Rev 6/2005)

SURFACE LESSEE
NOTICE OF SETTLEMENT OF DAMAGES

TO: DEPARTMENT OF NATURAL RESOURCES
___ Unit or ___ Area Office
ADDRESS:

RE: State Lease # _____

I have been informed that _____

of _____ is applying for department authorization under their oil & gas lease enter onto the following State Lands:

_____

_____

for the purpose of _____

_____.

As the Lessee of the State Land described above, I/(we) understand that if the proposed activity is authorized by the department, that I/(we) as leaseholder am/(are) entitled to compensation for damages, that may occur to my/(our) improvements, crops, or leasehold interest.

I/(we) also acknowledge that the said compensation, if any, is for actual damages only and that compensation should not exceed the actual value of the damages to my/(our) improvements, crops or leasehold interest.

I/(we), the undersigned hereby state that

_____ No damages are anticipated.

_____ Damages are anticipated and compensation has been received based on anticipated damages.

_____ Damages are anticipated and arrangements have been made for compensation.
Amount of Damage Payment _____ (paid or arranged)

_____ Damages are anticipated and the applicant & I (we) are not able to agree on the value of the damages. Attached is a listing of my/(our) improvements, crops and/or statement of what portion of my/(our) leasehold interest will be damaged and my estimate of value for compensable damages.

Signed this _____ day of _____, 20_____.

_____ (Lessee)

_____ (Lessee)

_____ (Lessee)

_____ (Lessee)

(NOTE: All persons named on the state surface lease must sign this settlement statement. If a person is signing on behalf of another, copies of a Power of Attorney must be provided. Additionally, if a person has signed on behalf of an estate, Personal Representative papers must also accompany this form.)

DS-483
6/20/05

OIL & GAS SURFACE DAMAGE SETTLEMENT

Department of Natural Resources and Conservation
Trust Land Management Division

O&G LEASE # _____ TRS: _____ COUNTY: _____

STATE OWNS: ☐ Surface & Minerals ☐ Minerals Only

PROPOSED ACTIVITY: _____

_____

_____

_____

_____

SURFACE OWNER/LESSEE PAYMENT: _____
(Provide lessee settlement form or other acceptable documentation)

DAMAGE SETTLEMENT DUE STATE: _____ (zero if the state does not own the surface)

TOTAL DAMAGE SETTLEMENT: _____

The above payments are for settlement of damages anticipated from the proposed activity only, and do not constitute waiver by the oil & gas lessee or the State of Montana of any legal rights. If unanticipated damages should occur that exceed the amount of settlement already paid, the oil & gas lessee remains liable for repair, replacement or compensation covering the unanticipated damages.

I hereby certify that I am a lessee of record or an agent of the lessee of record, and that I am authorized to act on behalf of the lessee of record for the purpose of executing settlement of damages for the proposed activity. I acknowledge that damage settlement has been made pursuant to the Surface Owner Damage and Disruption Compensation Act (82-10-501 et seq., MCA), Administrative Rule (ARM 36.25.217(3) and 36.25.238)), and pertinent provisions of the oil & gas lease.

Signed this_____ day of _____ , 20 _____

Oil & Gas Lessee or Agent: _____ Phone #: _____

By: _____

Address: _____

_____

_____

Accepted by the State of Montana
Trust Land Management Division Area/Unit Office: _____

_____

Address: _____

_____

_____

(Information on Back)

INSTRUCTIONS

(1) Fill out oil & gas lessee, location, county.
(2) Check whether state owns surface and minerals or just minerals. The state does not receive settlement for surface damages if it does not own the surface. However, use of this form documents the contact and compensation made to the owner of the surface.
(3) Provide brief description of proposed activity.
(4) As provided in 82-10-504(1)(b) MCA, determine with oil & gas lessee or their agent, by any formula mutually agreeable, the total settlement appropriate for the proposed activity. This will typically include the nature and extent of the activity, and the amounts being paid in the area for similar activity to owners of the surface.
(5) Document settlement amount provided to surface owner or lessee. If we do not own the surface, the amount paid to the surface owner will equal the total settlement amount for surface damages, leaving zero due to the state. If the state owns the surface and the surface is leased, the oil & gas lessee should have already contacted the surface lessee and made payment for damages pursuant to administrative rule (provided below). The settlement amount due the state will then be the difference between the total settlement payment and the payment to the surface lessee.
(6) Oil & gas lessee or their agent will fill in contact information, sign and date the form. Upon receipt of payment due the state, fill in area/unit office information and execute the form.
(7) Forward the original form with documentation to the Mineral Leasing Section Supervisor. Include payment or advise if deposited locally.

RELATED STATUTES

Surface Owner Damage and Disruption Compensation Act (82-10-501 et seq., MCA)
(Copy available upon request)

ADMINISTRATIVE RULES RELATING TO DAMAGE PAYMENTS ON STATE LEASES

36.25.217 OPERATIONS ON STATE LEASES . . .
(3) To minimize conflicts with the owner or lessee of the surface of the land leased, lessee hereunder shall:
(a) provide the surface owner or lessee with a plan for location of all facilities;
(b) consult with the surface owner or lessee regarding a reasonable location of access roads. The access roads must be located along section lines and existing roads to the fullest extent possible and they must disturb as little acreage as possible unless the surface owner agrees otherwise. In locating the roads, priority shall be given to minimizing interference with the surface owners or lessees operations. The lessee shall make just payment to the surface owner for all damage done by reason of his entry upon, and use and occupancy of, the surface of the land.
. . .

36.25.138 LESSEE OR LICENSEE DAMAGE COMPENSATION REQUIREMENTS (1) When the board or department issues a lease or license on property upon which a lease or license of a different type already exists, the existing lessee or licensee shall be compensated by the more recent lessee or licensee for damages to the crops, improvements or leasehold interest of said existing lessee or licensee. Lessees or licensees may not receive compensation for such damages in excess of the value of actual damages to the crops, improvements or leasehold interest of said existing licensee. Only in exceptional cases documented to and approved by the department may the lessee or licensee receive damages for natural resources or crops in excess of the annual rate that the lessee or licensee is making to the department for rental payments. If a lessee or licensee collects or attempts to collect an amount in excess of said actual damages, such action may constitute sufficient grounds for cancellation of the lease or license. The department may adjust the A.U.M.'s allocated to a grazing lease or license when there is issued a lease or license for another purpose and that other purpose interferes with the grazing on the state lease.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
TRUST LAND MANAGEMENT DIVISION

BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

October 4, 2005

Omimex Canada, Ltd.
65 East Broadway, Suite 401
Butte, Montana 59701

RE: State of Montana Oil and Gas Lease OG-31138-94
Township 33 North, Range 22 East
Section 16: Lots 1, 2, 3, 4, W½, W½E½
Blaine County, Montana
SE Cherry Patch #15-16 Well (SWSE)

Dear Lessee:

Please accept this letter as approval to drill the above referenced well, construct an access road to the well site, and install a pipeline on State of Montana Oil and Gas Lease OG-31138-94 with the following site-specific stipulations. Please refer to your oil and gas lease for general operational and reclamation requirements.

1. Lessee shall contact the Havre Unit Office at (406) 265-5236, 48 hours prior to any surface activity.

2. Lessee shall contact the state's surface lessee, Thomas E. Green, 48 hours prior to any drilling activity. Lessee shall settle all surface damages within a reasonable time period following the completion of the well.

3. Permittee shall be responsible for controlling all weeds around the well site, access road, and pipeline route on this tract of state grazing land.

4. In order to prevent the introduction of noxious weeds on this tract of state land, all equipment used on this project must be initially power washed prior to use.

5. Drilling activity may occur on dry or frozen ground only. No activity will be allowed during muddy conditions.

6. No vehicle oil changes or petroleum disposal shall occur on this tract of state land.

7. There will be no off-road traffic other than that necessary to accomplish well drilling and construction of an access road to the well site.

8. All gates will be closed and all fences that are taken down will be repaired as soon as possible.

9. The topsoil removed from the site must be located upslope from the project. Subsoil, excessive dirt, and pit stockpiles must be located down-slope from the project.

10. The access road must be kept to a minimal size in order to minimize the impact to the native rangeland resource. Turn-arounds must be kept to their initial size and are not to be expanded. The tear drop must be as close to the drill pad as possible.

11. All disturbed areas shall be seeded with State of Montana Certified or Registered seed. The seed mixture shall be planted in the amounts specified in pounds of pure live seed per acre (PLS/acre). The seed mixture shall consist of 5 lbs. PLS/acre 'Rosana' western wheatgrass, 5 lbs. PLS/acre 'Pryor' slender wheatgrass, 6 lbs. PLS/acre 'Lodorm' green needlegrass, and 2 lbs. PLS/acre yellow sweetclover (seed poundage is to be doubled if area is broadcast seeded). The seeding will be repeated until a satisfactory stand is established as determined by the Havre Unit Office.

Please send this Department a copy of your surface lessee damage settlement as soon as it is available. After the well has been drilled, please send this Department a copy of your completion report and geologic information. If you have any questions, let us know.

Sincerely,

Monte G. Mason, Chief
Minerals Management Bureau

copy: Clive Rooney, Area Manager, NELO, DNRC, Lewistown, MT
Dan Dobler, Unit Manager, Havre Unit Office, DNRC, Havre, MT
Dale Stoodley, Montana Land & Exploration Inc., Calgary, Alberta, Canada
Trent Sizemore, Lonewolf Energy, Inc., Billings, MT

Model Surface Use and Mineral Development Accommodation Act

Source: Uniform Law Commissioners

It is possible for different interests in land to be held or owned by different persons. That is, the same visible geography may be subject to more than one kind of ownership interest. This is because American property law views interests in land as bundles of rights and obligations held by people against or on behalf of other people. Real estate law regulates relationships between people fundamentally, and the actual geography is simply the subject of those relationships.

One way to have different interests in different people in the same geography is to have ownership of the surface interests different from ownership of the mineral interests. What are surface interests? They are, generally, the right to occupy and use the surface of the land in any lawful way - to build on it the lawful structures that are permitted, to rent its occupation and use, and to sell the same, if that is what the surface owner wants to do.

The mineral interest is more confined. It is the right to remove valuable minerals that are found under the surface of the land. Implied in that right is the right to enter the geography on the surface and to use that surface in a manner consistent with the right to remove the minerals below the surface.

If there is a different owner for the surface interests and for the mineral interests, is there a potential conflict? Of course! The owner or holder of the mineral interests has the right to interfere with the surface interest to exercise the mineral interest. With some rare exceptions in the common law, the holder of the mineral interest does not have to compensate the holder of the surface interest for that interference.

In the United States today, there is considerable land, actual geography, for which the surface and mineral interests are held separately. As the demand for valuable and even semi-valuable minerals (gravel, for example, is a kind of mineral) increases, the potential for conflict increases and has increased.

In 1990, the Uniform Law Commissioners have promulgated the Model Surface Use and Mineral Development Accommodation Act (MSUMDAA) in an effort to resolve that conflict. It tries to resolve it by encouraging agreement and accommodation between the holders of the separate interests.

Both the holders of the surface interests and the mineral interests have the power to demand agreement and accommodation over the development of mineral interests. The mineral estate remains, as it is under the common law, the dominant estate. But the owner of the mineral interest can avoid

liability to the surface owner only by giving notice of proposed mineral development together with a plan to accommodate existing surface uses or improvements. The surface owner may object and subject the proposed development and the plan to a judicial proceeding. In the proceeding, if the court finds that mineral development is economically, technologically, and economically practicable, and that it cannot be conducted without injury to the surface use or improvement, or that the surface use or improvement interferes with sound practices of mineral development, then the mineral developer can proceed without any accommodation and without liability to the surface owner.

However, if the court finds no probability of mineral development, or that the surface use or improvement does not interfere with such development, then the mineral developer must accommodate the surface owner and may be liable for damages resulting from that development.

The surface owner also has the power to give notice to the mineral owner of any surface use or improvement that might need protection from mineral development. If the mineral owner does not object, there may be liability for injury from any future mineral development. If there is objection, the court follows the same pattern of findings described above.

MSUMDAA also determines the damages in the event there is liability for injury to the surface interests. The losses compensated are, generally, the economic losses suffered by the surface owner.

The conflicts between surface and mineral owners continue in a large part of the United States. MSUMDAA can resolve conflicts fairly and without halting necessary mineral development.

UNIFORM LAW COMMISSIONERS' MODEL SURFACE USE AND MINERAL DEVELOPMENT ACCOMMODATION ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-NINTH YEAR
IN MILWAUKEE, WISCONSIN
JULY 13 - 20, 1990

WITH PREFATORY NOTE AND COMMENTS

UNIFORM LAW COMMISSIONERS'
MODEL SURFACE USE AND
MINERAL DEVELOPMENT ACCOMMODATION ACT

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MODEL SURFACE USE AND MINERAL DEVELOPMENT ACCOMMODATION ACT

PREFATORY NOTE

This Model Act results from the existence in some parts of the United States of large areas where mineral estates were severed from surface estates but where no known mineral deposits exist or where there is little prospect that any known minerals will be developed. Because these severed mineral estates carry appurtenant easements of access through, and use of, the surface for mineral development purposes, the existence of the severed mineral estates can hinder development of the surface estates. Both surface owners and money lenders may be unwilling to risk capital to develop the surface where future mineral development could disturb the surface development. There are sufficient examples of a mineral previously thought to be of no value becoming valuable to make the risk sufficiently real that surface developers must take it into account.

An example of legislative recognition of the need to deal with this problem is the Texas Mineral Use of Subdivisions Act of 1983. (Tex. Nat. Res. Code ch. 92 (Supp. 1990)) The Texas act authorizes the Texas Railroad Commission to approve subdivision plats if the plats designate appropriate surface areas and easements for mineral development. Thereafter if the subdivision development goes forward, the mineral developer is limited to using the designated areas and easements. The purpose statement of the Texas act provides in part:

> It is the finding of the legislature that the rapidly expanding population and development of the cities and towns of this state and the concomitant need for adequate and affordable housing and suitable job opportunities call for full and efficient utilization and development of all land resources of this state, as well as the full development of all the minerals of this state. (§ 92.001)

Other states have taken a different approach to surface development risks and have enacted statutes that, while not limiting the mineral developer's access, allow surface owners to collect damages for any surface interference or harm that results from mineral development. Those states and the year of adoption are as follows: Indiana, 1951; North Dakota, 1975 (coal); North Dakota, 1979; Montana, 1981; Oklahoma, 1982; South Dakota, 1982; West Virginia, 1983; Tennessee, 1984; and Illinois, 1988. However, except for the 1975 North Dakota act, these acts relate only to oil and gas development.

While the approach adopted in this Model Act is more general than the Texas approach, it does not adopt the approach of the other states either. Instead the Model Act: (1) recognizes the appurtenant easement; (2) adopts the accommodation doctrine as developed through common law decisions in several states for balancing the respective interests of surface and mineral estate owners (see Comment to Section 2); (3) provides mineral developers with an opportunity to get advance approval of mining plans as being in accord with the accommodation doctrine; (4) provides surface owners with an

opportunity to qualify some surface uses or improvements for damages from any interference by mineral development except during ongoing mineral development; (5) recognizes express expansions and limitations on the easement and the accommodation doctrine; (6) recognizes agreements relating to the duties and rights established under the Act; (7) prohibits injunctions and limits the damages recoverable for claims under the Act; and (8) specifies some procedures to be followed. Finally the Act is supplemental to the common law, equity, and other statutory rights and remedies.

MODEL SURFACE USE AND MINERAL DEVELOPMENT ACCOMMODATION ACT

SECTION 1. STATEMENT OF POLICY AND FINDINGS.

(a) The public policy of this State is to maximize the economic, cultural, and environmental welfare of the people by preserving all reasonable opportunities for optimum development and use of all surface and mineral resources. To that end, it is declared that where mineral estates are severed from surface estates by grant or reservation it is the public policy of this State to: (i) facilitate responsible development of surface and mineral estates by quantifying so far as practical the surface and mineral rights and burdens arising from the severance of the estates; (ii) encourage accommodation of potentially conflicting interests by agreement; and (iii) provide expeditious procedures for defining and quantifying rights and obligations of owners of severed estates whenever uncertainties exist and conflicts arise.

(b) The [legislative body of this State] finds that this public policy can be pursued without impairment of any constitutionally protected right of owners of severed estates through the exercise of the state's police power in the manner provided in this [Act].

(c) The [legislative body of this State] declares that the purpose of this [Act] is to provide damages as the sole remedy for violations of duties and obligations provided by this [Act] and not otherwise to limit or restrict the right of an owner of a severed mineral interest to engage in the development of minerals. This [Act] does not limit or restrict action upon or issuance of any permit, license, or approval required under other law for mineral development.

SECTION 2. DEFINITIONS. In this [Act]:

(1) "Accommodation" means the exercise of mineral development rights with due regard for the rights of the surface owner as to surface use and improvements, if technologically sound and economically practicable alternative methods of mineral development exist. "Accommodate" has a corresponding meaning.

(2) "Mineral" means gas, oil, coal, other gaseous, liquid and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral by any law of this State.

(3) "Mineral developer" means the owner of a severed mineral estate or any lessee or other person who has rights of mineral development.

(4) "Mineral development" means the full range of activity, from exploration through production and reclamation, associated with the location and extraction of a mineral which will cause physical damage to the surface. The term includes (i) processing and transportation of the minerals if those operations are conducted on the same surface tract from which the underlying mineral is extracted; and (ii) recovery of any mineral left in residue from previous extraction or processing operations.

(5) "Ongoing mineral development" means: (i) the continuation of any mineral development that is being conducted on or under the surface; (ii) additional mineral development that is identified in a work plan, pooling or unitization agreement, or other document, that has been approved by an agency responsible for regulating the mineral development; or in drilling or mining logs or other records maintained by a mineral

developer; or (iii) the resumption or extension of mineral development within 30 years after the previous production stopped.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(7) "Surface" means the exposed area of land, improvements on the land, subjacent and lateral support for land and structures, and any part of the underground actually used by a surface owner as an adjunct to surface use, such as root medium, groundwater, and construction footings.

(8) "Surface owner" means a person who holds an interest of record in the surface estate or a person in possession of the surface who holds an unrecorded interest in the surface estate, excluding adverse claimants without adjudicated title.

(9) Except when expressly stated otherwise, "surface use or improvement" means an existing or future surface use or improvement.

COMMENT

The definition of accommodation is drawn, in particular, from the language of the Texas Supreme Court in Moser v. U.S. Steel, 676 S.W.2d 99, 103 (Tex. 1984), where in the context of dealing with uranium the court refers to the doctrine as the "'due regard' or 'accommodation' doctrine". Cases that apply or further define accommodation include: Flying Diamond Corp. v. Rust, 551 P.2d 509 (Utah 1976); Getty Oil Co. v. Jones, 470 S.W.2d 618 (Tex. 1971); Reading & Bates Offshore Drilling Co. v. Jergenson, 453 S.W.2d 853 (Tex. Civ. App. 1970); Getty Oil Co. v. Royal, 422 S.W.2d 591 (Tex. Civ. App. 1968); Gulf Pipe Line Co. v. Pawnee-Tulsa Petroleum Co., 34 Okla. 775, 127 Pac. 252 (1912). Thus mineral owners or developers may not impair an existing surface use or improvement where technologically and economically feasible alternatives for developing the minerals are available to the mineral owner or developer. In Getty Oil Co. v. Royal, 422 S.W.2d 591, 592 (Tex. Civ. App. 1968), the mineral developer sued to prevent the surface owner from installing gates across roads that the mineral developer used to access three oil wells and a meter. The mineral developer had constructed the roads and used them in an open condition "for many years" before defendant acquired the tract and built a fence around it with four gates across the roads. The court upheld the

surface owner's conduct concluding that the mineral developer having to get in and out of a vehicle five times rather than once to service a well is not an unreasonable inconvenience. The surface owner had an interest in keeping out trespassers and it was proper to instruct the jury to balance the inconvenience to the mineral developer with the utility to the surface owner. Thus it is not conclusive against the surface owner if the alternative methodology costs the mineral developer more. As another illustration, a road accessing a mine site may cost more to place at the edge of a farmer's field than it would cost to run it through the middle of the field, but the added cost may have no significant effect on the overall profitability of the venture. The accommodation doctrine is a specific application of the reasonable use aspect of the surface and use access easement recognized in Section 3.

The definition of mineral does not redefine mineral for general purposes. The intent is to cover all substances subject to severance from the surface and development the way traditional minerals are developed. Sand and gravel are surface-mined much like coal. Therefore a surface owner facing sand and gravel extraction should be treated the same as a surface owner facing coal extraction. The definition here follows the definition used in the Uniform Dormant Mineral Interests Act.

The definition of surface is intended to be broad enough to include riparian rights and any other property right privileges to use land covered by water as surface. Thus the owner of a right to wharf out who builds a dock into the water has a surface improvement in the dock.

SECTION 3. EASEMENT FOR SURFACE ACCESS AND USE ACCOMMODATION.

(a) The separation of a mineral estate with a right of mineral development from the surface by deed, lease, or other instrument, in the absence of language in the instrument to the contrary, establishes the mineral estate as the dominant estate and creates an easement on and through the surface for reasonable access to the minerals in place and for reasonable use of the surface in the development of the mineral estate, as defined by other law of this State.

(b) A surface access and use easement under subsection (a) is subject only to accommodation to surface uses and improvements and enlargements or curtailments effected under Section 4, 5, 6, or 8 or by agreement.

COMMENT

Both the existence of the easement and the dominance of the mineral estate are well recognized. The North Dakota Supreme Court recently stated both:

> The above cases recognize the well-settled rule that where the mineral estate is severed from the surface estate, the mineral estate is dominant. . . . The mineral estate is dominant in that the law implies, where it is not granted, a legitimate area within which mineral ownership of necessity carries with it inherent surface rights to find and develop the minerals, which rights must and do involve the surface estate. Without such rights the mineral estate would be meaningless and worthless. Thus, the surface estate is servient in the sense it is charged with the servitude for those essential rights of the mineral estate.
>
> In the absence of other rights expressly granted or reserved, the rights of the owner of the mineral estate are limited to so much of the surface and such use thereof as are reasonably necessary to explore, develop, and transport the minerals.

Hunt Oil Co. v. Kerbaugh, 283 N.W.2d 131, 135 (N.D. 1979). Conversely, a surface owner is entitled to use the surface to the extent that the surface use is consistent with the mineral development right. See Reading & Bates Offshore Drilling Co. v. Jergenson, 453 S.W.2d 853, 855 (Tex. Civ. App. 1970).

While this Act in Section 3(a) declares the existence of the implied easement of surface access and use, it does not provide a basis for deciding whether a particular means of access or a particular use, such as a power line, surface versus underground mining, employee living quarters, and so forth, is within the scope of the easement. The Act declares only that parties may by agreement limit or enlarge the access and use and then applies the accommodation doctrine to whatever access or use is determined to be within the scope of the easement. For example, several courts have ruled that when access language in the severance document is consistent with underground mining, the mineral developer does not have a right to develop the mineral by the surface or strip mining method. See, e.g., Skivolocki v. East Ohio Gas Co., 38 Ohio St. 2d 244, 313 N.E.2d 374 (1974); Stewart v. Chernicky, 439 Pa. 43, 266 A.2d 259 (1970). Decisions as to what reasonable surface uses exist for the mineral developer will continue to be made under the common law of the state.

The Act creates a statutory accommodation doctrine. See Section 2(1) and the Comments thereto for definition. Section 3(b) also makes clear that the accommodation doctrine as adopted in this Act provides protection for mineral development and surface uses and improvements as effected under Section 4, 5, 6, or 8. Thus under Section 4 a mineral developer may seek to have a mineral development plan preapproved as to accommodation. Under Section 5 a surface owner may seek full protection for a specific use or improvement. Under Section 6, mineral owners or developers and surface owners

may agree as to the scope of the accommodation doctrine. Section 8 provides for court action to determine a Section 4 or Section 5 privilege.

Although the following illustrations of subsection (b)(1) refer to surface improvement, they apply as well to surface use. In each instance mining would start after the stated events.

1. O has an improvement on the surface at the time O transfers the mineral estate to X without an express waiver of liability for surface damages. Then this Act is passed. O's improvement can be protected under the accommodation doctrine as defined in this Act. Therefore, a mineral developer must proceed with due regard for the improvement if technologically sound and economically alternative methods of mineral development exist.

2. O transfers the mineral estate to X without an express waiver of liability for surface damages. Thereafter O, or a successor to the surface estate, makes an improvement on the surface. This Act is passed. The improvement can be protected under the accommodation doctrine as defined in this Act. Therefore, a mineral developer must proceed with due regard for the improvement if technologically sound and economically alternative methods of mineral development exist.

3. O transfers the mineral estate to X without an express waiver of liability for surface damages. This Act is passed. O, or a successor to the surface estate, makes an improvement on the surface. The improvement can be protected under the accommodation doctrine as defined in this Act. Therefore, a mineral developer must proceed with due regard for the improvement if technologically sound and economically alternative methods of mineral development exist.

The accommodation doctrine as defined allows some injury to or interference with a surface improvement or use. However, a surface owner with an improvement as noted in illustrations (1) to (3) may also obtain a right to the damages allowed under Section 10 for any interference with or injury to the improvement from mineral development by qualifying the improvement or use under Section 5.

If in either of illustration 1, 2, or 3, there is an express waiver of liability for surface damages given before the passage of this Act, the accommodation doctrine as adopted by this Act applies only to the extent application is not inconsistent with the waiver. See Section 6.

SECTION 4. PROTECTION OF MINERAL DEVELOPMENT. If a mineral developer gives each surface owner notice of proposed mineral development, together with a plan to accommodate existing surface uses or improvements protected by Section

3(b) or a plan satisfying requirements for a permit under federal or state law, the mineral developer is not liable for failure to accommodate surface uses or improvements affected by the proposed plan unless (i) a surface owner serves on the mineral developer a written objection to the plan within 60 days after receipt of notice, challenges the plan by a proceeding under Section 8 and obtains a favorable determination in the proceeding, or (ii) the mineral developer makes material deviations from the plan which result in material injury to surface uses or improvements entitled to protection under the accommodation doctrine.

COMMENT

Under the implied right to make a reasonable use of the surface, the courts held that the mineral developer was not liable for damages when the mineral developer was making a reasonable use of the surface. See Reading & Bates Offshore Drilling Co. v. Jergenson, 453 S.W.2d 853, 854-55 (Tex. Civ. App. 1970). Thus under the accommodation doctrine which grows out of the reasonable use limitation, the mineral developer is not liable to the surface owner for damages that result when there is no violation of the doctrine.

It was possible under the common law for a mineral developer to get a pre-mining determination of reasonable use and to enjoin a surface owner from interfering with the reasonable use. See, e.g., Hunt Oil Co. v. Kerbaugh, 283 N.W.2d 131 (N.D. 1979). This section specifically allows the mineral developer to obtain a determination that its mineral development will be consistent with the accommodation doctrine. If the mineral developer obtains the determination and conforms its operation to the plan so approved, it will be insulated from liability under this Act for violation of the accommodation doctrine. See Section 8(d).

Section 7 provides the form for any notice or objection to be given under this Act. If a notice or objection does not conform substantially to that form it does not constitute notice or objection under this Act. Additionally, under Section 9 the notice or objection must be recorded. Notices provided to surface owners by mineral developers as a result of the requirements of other statutes, for example SMCRA, do not trigger this section. The only interrelationship between this section and other statutes is that the mineral developer may use plans developed under the other statutes to meet the informational aspects of this section when the mineral developer chooses to invoke this section.

Sections 4 and 5 necessarily are mutually exclusive to the extent that one or the other is exercised.

SECTION 5. PROTECTION OF SURFACE USE OR IMPROVEMENT.

(a) A surface owner who desires protection for a proposed surface use or improvement may give the mineral developer notice of the use or improvement. The mineral developer is subject to a claim for damages for any injury that subsequent mineral development causes to the use or improvement unless there is ongoing mineral development or the mineral developer makes a written objection to the proposed use or improvement to the surface owner within 60 days after receipt of the notice.

(b) If the mineral developer makes a written objection on the surface owner pursuant to subsection (a), the surface owner may gain protection for the proposed use or improvement only by (i) entering into an agreement with the mineral developer, or (ii) obtaining a determination in a proceeding under Section 8 that there is no probability of future mineral development or that technologically sound and economically practicable mineral development can be conducted without material injury to the surface use or improvement.

COMMENT

Under the implied right to make a reasonable use of the surface, the courts held that the mineral developer was not liable for damages when the mineral developer was making a reasonable use of the surface. See Reading & Bates Offshore Drilling Co. v. Jergenson, 453 S.W.2d 853, 854-55 (Tex. Civ. App. 1970). Thus under the accommodation doctrine which grows out of the reasonable use limitation, the mineral developer is not liable to the surface owner for damages that result when there is no violation of the doctrine. However, it is this very right to use the surface without payment for surface damage that can impede surface development.

This section allows a surface owner to seek full protection for a use or improvement except when there is ongoing mineral development. Section 7 provides the form for any notice or objection to be given under this Act. If a notice or objection does not conform substantially to that form it does not constitute notice or objection under this Act. Additionally, under Section 9 the notice or objection must be recorded. If a surface owner successfully pursues protection under this section, the surface owner will be entitled to the damages as measured in Section 10 for any injury to a protected surface

use or improvement even if the injury would not have been recognized as a violation of the accommodation doctrine. See Section 8(c).

This section is not available to a surface owner during a period of ongoing mineral development. The notion is that once mining has started, the surface owner should not be able to change the rules while that mining is ongoing. This applies also to mining that has been identified in the type of plans noted in the definition before the surface owner invokes this section. The key however is not the continuation of mineral development but rather the continuation of the existing mineral development or that identified in the plan. Obviously the surface owner needs to be on notice of the plan for it to enter into the surface owner's consideration in invoking this section.

If the surface owner does not pursue protection under this section at the time that the opportunity to do so first arises, the surface owner risks losing the lack of probability of future mineral development as a ground for protecting the surface use improvement. This is because under Section 8 probability is determined only as of the time of the proceeding and not as of the time of the inception of the surface use or improvement.

Sections 4 and 5 necessarily are mutually exclusive to the extent that one or the other is exercised.

SECTION 6. MODIFICATIONS OF EASEMENT FOR SURFACE ACCESS AND USE. An easement for surface access and use and the obligation to accommodate are subject to (i) any provision of a deed, lease, or other instrument which expressly requires payment of surface damages, or waives surface damages, or protects surface improvements constructed before or after severance occurs or the obligation to accommodate arises; and (ii) any agreement relating to surface use or improvement or damages.

COMMENT

In Section 6(i) the Act recognizes expansion of or limitations on the surface access and use easement and on the accommodation doctrine contained in past or future deeds, leases, or similar documents if the expansion or limitation is express. Thus, for example, broad form mineral deeds and reservations do not waive damages unless damages are expressly waived in addition to the broad form rights of access and use. Otherwise this section does not declare the validity of these expansions or limitations but assumes that they are valid under contract and property principles. If invalid, they would have no relevance to this Act. In Section 6(ii) the Act recognizes that the mineral owner

or mineral developer and surface owner may come to an agreement on how to carry out the rights and obligations of this Act.

Although the exceptions in Section 6 are recognized by the Act and can serve to limit the scope of the Act, the exceptions are otherwise extraneous to the Act. Any remedies for their violation would be through proceedings pursued separate and apart from proceedings specified in this Act.

This section does not abrogate any duty impose by any other statute of the state.

SECTION 7. PROCEDURES FOR NOTICE AND OBJECTION. A notice or objection to a surface owner or mineral developer is sufficient if it is in writing and delivered with a return of service or mailed with return receipt requested. The notice must state the time for objection and the address to which an objection in writing may be mailed or delivered. The notice must be accompanied by a description of the mineral development or the surface use or improvement and a copy of this [Act].

COMMENT

A failure to conform substantially to the notice or objection procedure or form contained in this section would render the notice or objection ineffective under this Act. No other remedy for notice failure is provided in this Act.

SECTION 8. DETERMINATION WHETHER ACCOMMODATION IS REQUIRED.

(a) If the surface owner and mineral developer are unable to reach an agreement under Section 4 or 5, either party may institute an appropriate proceeding.

(b) If it is determined in the proceeding that (i) mineral development in the foreseeable future is probable based upon reasonably foreseeable economic conditions and technology and that technologically sound and economically practicable mineral development cannot be conducted without material injury to the surface use or

improvement, or (ii) that the proposed surface use or improvement would interfere materially with technologically sound and economically practicable mineral development, the mineral developer may exercise the development easement appurtenant to the mineral estate without accommodation for the proposed surface use or improvement and is not liable under this [Act] for damages to the proposed use or improvement.

(c) If it is determined in the proceeding that (i) there is no probability of mineral development in the foreseeable future, based upon reasonably foreseeable economic conditions and technology, or (ii) the proposed surface use or improvement would not interfere materially with technologically sound and economically practicable mineral development, the mineral developer may exercise the development easement appurtenant to the mineral estate only with accommodation for the proposed surface use or improvement and is liable under this [Act] for damages to that use or improvement. If the determination under this subsection authorizes a new use or improvement, and the surface owner does not begin the proposed use or construction of the proposed improvement within three years after the determination, the mineral developer is thereafter relieved from the obligation to accommodate the proposed surface use and improvement and is not liable under this [Act] for damages to the proposed use or improvement.

(d) The issues specified in subsections (b) and (c) are the sole substantive issues for determination in the proceeding. A court may not enjoin mineral development or surface use or improvement under this [Act].

(e) The court shall award to the prevailing party reasonable attorney's fees and other expenses incidental to the proceeding.

COMMENT

What constitutes an appropriate proceeding will depend on the law of the state. For example, it might be a declaratory judgment proceeding, a civil proceeding, or a proceeding in arbitration.

When a specific approved use is not instituted within three years, the mineral developer is absolved from accommodating that use under this Act; however, the developer is not absolved from accommodating any existing uses that are ongoing. Those uses simply do not have the additional protection accorded under Section 5.

However, if the use or improvement is instituted, the duty to accommodate will extend to the life of the use or improvement unless provided otherwise in the decree of the decision-maker under this section. A mineral developer could seek equitable relief on the basis that the life of the use or improvement is over.

The limits in this Act on injunctive relief apply only to claims provided for by this Act. Therefore, injunctive relief as available in equity for actions outside this Act is not affected by the Act. Similarly injunctive relief provided for in other statutes that apply to mineral development is not affected by this Act. See Section 11.

While a surface owner may abandon an approved use and seek approval of a different use, after several abandonments and approvals of different uses, a court may want to be sure that the surface owner is pursuing bona fide plans rather than simply instituting actions to harass the mineral owner or developer.

SECTION 9. RECORDATION.

(a) The written notice and written objection required by Sections 4 and 5 must be recorded in each county in which the affected land is located.

(b) A deed, lease, instrument, agreement under Section 6, or a determination under Section 8, may be recorded in each county in which the affected land is located.

SECTION 10. MEASURE OF DAMAGES FOR FAILURE TO ACCOMMODATE - LIMITATIONS.

(a) If a mineral developer fails to accommodate a surface use or improvement protected under this [Act], the surface owner may maintain a civil action to recover damages for:

(1) loss of surface use limited to the greater of (i) loss of income for any interrupted period of use of the surface or improvements under the accommodation doctrine, or (ii) loss of value of the use of the surface or improvements during any period of interrupted use; and

(2) injury to or destruction of surface improvements limited to the lesser of (i) the loss of fair market value of the improvement, or (ii) the cost of repairing, relocating, or replacing the improvements.

(b) A mineral developer may offset the value of any required reclamation activity or any benefits conferred on the property as a result of mineral development against the amount of aggregate damages for loss of surface use and destruction of or injury to surface improvements.

(c) An action to recover damages under this section may not be commenced more than two years after the loss is or should have been discovered by the surface owner, but the parties by agreement may modify or waive the period of limitation.

COMMENT

This section applies only to damages awarded under this Act. See Section 11.

In subsection (b) royalty received by the surface owner would not be a benefit received; however, a royalty agreement may be entered into as a method of compensating for damages and if the agreement so specifies will be an agreement under Section 6(ii). An improved access road for the surface owner would be an example of a type of benefit that might be conferred by the mineral development.

SECTION 11. RIGHTS PRESERVED. Except as specifically modified by this [Act], this [Act] does not limit liability of the surface owner under other law for impairment or obstruction of mineral development or correlative remedies of the mineral developer, or liability of the mineral developer under other law for unreasonable or excessive use of the surface or correlative remedies of the surface owner.

COMMENT

In Heikkila v. Carver, 416 N.W.2d 593, 596 (S.D. 1987), the court summarized the possible bases for surface owner damage actions:

> Moreover, apart from liability based on either a surface damage clause or the theory of unreasonable surface use, liability can also be based on theories of tort law or breach of statutory duties.

"Where liability is found to exist based on negligence, the remedy is compensatory damages. Additionally, in cases of wanton disregard of the interests of the surface owner, punitive damages may be awarded." Turner v. Kaufman, 237 Kan. 184, 699 P.2d 435, 439 (1985). All causes of action available at common law, whether based on obstruction, excessive or unreasonable use, negligence, nuisance, malicious or intentional misuse, contract, other recognized grounds and all causes of action conferred by other statutory law are preserved.

The limits in this Act on injunctive relief apply only to claims provided for by this Act. Therefore, injunctive relief as available in equity for actions outside this Act is not affected by the Act. Similarly injunctive relief provided for in other statutes that apply to mineral development is not affected by this Act. See Section 11.

This Act does not limit duties placed on mineral developers under other statutes as, for example, SMCRA and Oil and Gas Conservation Acts.

SECTION 12. SHORT TITLE. This [Act] may be cited as the Model Surface Use and Mineral Development Accommodation Act.

SECTION 13. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is invalid, the invalidity does not affect any other provision or application of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 14. EFFECTIVE DATE. This [Act] takes effect _____.

SECTION 15. REPEALS. The following acts and parts of acts are amended or repealed:

(1)
(2)
(3)

Well Permitting Requirements and Process
Oil and Gas Conservation Division

I) Before or concurrent with filing Application for Permit to Drill

1) Organization report
2) Plugging and restoration bond
3) Notice of intent to drill published in Helena newspaper and paper in general circulation in the county (for wells outside of delineated fields)

II) Permit Application

1) Completeness review
   a) survey plat
   b) description of blow-out prevention equipment
   c) wells in areas with H2S gas might require H2S contingency plan
   d) topographic map (access routes, residences, water wells)
   e) well site diagram
   f) type of drilling fluid
   g) reserve pit sketch (dimensions, freeboard, berms)
   h) reserve pit liner description
   i) plan for treatment or disposal of reserve pit solids and liquids
   j) identification of other agency permits that might be required
   k) verification / confirmation of public notice (I.3)

2) Technical review
   a) determine compliance with applicable spacing, well location or special field rules.
   b) casing program review
      i) adequate surface casing to protect underground sources of drinking water (USDW's) including any water wells identified on the permit application or the GWIC database.
      ii) adequate coverage of deeper critical zones
   c) require or not require well cuttings to be submitted

III) Additional Requirements for Class II Injection wells

1) Underground Injection Control (UIC) bond
2) Complete and approved injection permit package
3) Public hearing scheduled consistent with a 30-day notice requirement under UIC rules
4) Additional construction and siting requirements under UIC program such as required levels of protection for USDW's, and area of review analysis
5) EPA-approved aquifer exemption for receiving zones of less than 10,000 milligrams per liter (mg/l) total dissolved solids (TDS) required prior to injection

IV) Environmental Assessment

1) Analysis Categories Include (with examples):

Air Quality (deep drilling, high horsepower, proximity to Class I air quality area, presence of hydrogen sulfide (H2S) gas)

Water Quality (salt- or oil-based mud system, proximity to drainages, soil makeup, high water table or irrigated cropland)

Soils, Vegetation, and Land Use (stream crossings, erosion potential, loss of productivity, damage to existing improvements)

Health Hazards / Noise (blow-out potential, excessive noise, presence of H2S)

Wildlife/Recreation (proximity to sensitive wildlife areas, new access creation, threatened or endangered species)

Historical/Cultural/Paleonotological (proximity to known sites, land ownership)

Social/Economic (effect on tax base, creation of demand for government services, population impacts)

2) Mitigation measures may be included as permit stipulations.

V) Administrative Permit Rejection

1) Permit applications may be referred to the board, or applicant may have the opportunity to withdraw or modify the application.

VI) Permit Approval

1) If application is subject to the published notice requirement and 10 days have passed the permit may be approved with any stipulations that may result from either the technical or environmental review.

2) Permits not subject to 10-day notice requirement can be approved upon completion of completeness, technical, and environmental review.

3) If there is a request for the permit application to be heard it will be scheduled for the board's next available hearing date in accordance with A.R.M 36.22.601.

HB 790 Committee Meeting – Sidney, Dec 9, 2005

HB 790 Study Elements:

SPLIT ESTATES

- procedures and timelines for giving notice to surface owners;

  Current Laws: Montana 10 to 90 days; Wyoming 30 to 180 days, ND 20 days (all - actual notice)
  Other notices in MT: Notice of well drilling permit – 10 days (published); Notice of spacing or Forced Pooling – 20 days prior to Hearing (actual notice); other BOGC hearings – 10 days (published)

- minimum provisions for surface use agreements;
- elements that should be considered in surface use agreements, including but not limited to road development, onsite water impoundments, and the quality and disposal of produced water, and onsite water impoundments;

  Current law does not specify the form or substance of an agreement, but does seem to envision the existence of an agreement. For approval of new CBM operations, MBOGC Record of Decision requires a written agreement be offered and a copy made available to Board upon request if accepted by the parties. If an agreement is not in place, the operator must certify that it was offered.

- provisions for addressing disagreement on estimated damages between the surface owner and the mineral owner;

  Current Law: Montana - ...person seeking compensation... may bring an action for compensation in the district court of the county in which the damage was sustained. North Dakota: landowner may bring action in District court—if court awards damages greater than offered by the developer, court may award court costs, attorney's fees and interest to the landowner. WY also allows court action by landowner, provides for mediation, arbitration, or alternate dispute resolution by "mutual agreement" .

- bonding requirements, if any, based on the type of activity.

  Current Laws in MT and ND do not provide for "bonding on"; WY provides for a minimum $2,000 well site bond; bond is in addition to the usual reclamation bond and the O&G Commission makes final decision about size of bond and may establish a blanket bond for all well on a surface owners land.

RECLAMATION AND BONDING FOR COAL BED METHANE OPERATIONS

- assessing current requirements for reclamation and bonding for coal bed methane

operations and determining if they are adequate;

MT: "the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration; WY: ""Reclamation" means the restoring of the surface directly affected by oil and gas operations, as closely as reasonably practicable, to the condition that existed prior to oil and gas operations, or as otherwise agreed to in writing by the oil and gas operator and the surface owner"; ND requires reclamation "as closely as practicable to original condition"

- evaluating laws related to surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation in other states;

  MT, ND, and WY generally do not distinguish between CBM and Conventional gas in rules or operating requirements; WY has special spacing rules for Powder River Basin CBM. WY has a discretionary bond to cover CBM water impoundments.

- exploring alternatives and approaches for balancing mineral rights with surface rights;

  MT, WY and ND have damage/compensation laws; all 3 states recognize the surface estate is subservient to the mineral estate, therefore the "balancing" statutes tend to emphasize use agreement, compensation for damage, notice and similar process requirements

- identifying the relationship between federal law and state law with regard to split estates and jurisdiction;

  BLM rules generally require surface use agreements with a "bond-on" provision if one is not obtainable. BLM asserts jurisdiction for wells on Federal Minerals; BOGC does not assert jurisdiction over Federal mineral operations, except UIC wells.

- evaluating the necessity and feasibility of post operation reclamation requirements or alternatives, including water pits and impoundments

  MT, WY, and ND require restoration or reclamation of areas disturbed for oil and gas drilling. All 3 allow an "alternate plan" of restoration which generally defers to the surface owner the level of reclamation accomplished on private land. For example, WY allows CBM impoundments to remain unrestored and transferred to landowner; bonds may be waived for such impoundments.

Final Coal Bed Methane Order for Powder River Basin Controlled Groundwater Area

BEFORE THE BOARD OF OIL AND GAS CONSERVATION OF THE STATE OF MONTANA

IN THE MATTER OF THE BOARD'S OWN MOTION FOR AN ORDER ESTABLISHING COAL BED METHANE OPERATING PRACTICES WITHIN THE POWDER RIVER BASIN CONTROLLED GROUNDWATER AREA IN BIG HORN, POWDER RIVER, ROSEBUD, TREASURE AND CUSTER COUNTIES, MONTANA.
ORDER NO 99-99

Docket 130-99

Report of the Board

The above entitled cause came on regularly for hearing on the 9th day of December, 1999, in the Billings Petroleum Club, Billings, Montana, pursuant to the order of the Board of Oil and Gas Conservation of the State of Montana, hereinafter referred to as the Board. At this time and place testimony was presented, statements and exhibits were received, and the Board then took the cause under advisement; and, the Board having fully considered the testimony, statements and exhibits and all things and matters presented to it for its consideration by all parties in the Docket, and being well and fully advised in the premises, finds and concludes as follows:

Findings of Fact

1. Due, proper and sufficient notice was published and given of this matter, the hearing hereon, and of the time and place of said hearing, as well as the purpose of said hearing; all parties were afforded opportunity to present evidence, oral and documentary.

2. Current interest in developing coal bed methane reserves in the Powder River Basin has raised concerns about the effects of such development on groundwater in the area because production of such reserves will require dewatering the coal beds

Order

IT IS THEREFORE ORDERED by the Board of Oil and Gas Conservation of the State of Montana that this general order applies to coal bed methane wells drilled on private and state land in the Powder River Basin Controlled Groundwater Area as established by the Department of Natural Resources and Conservation. It does not apply to lands owned by Indian Tribes or held in trust by the United States for Indian Tribes or individual Indians.

1. Applications for permit to drill exploratory wells to determine the potential for coal bed methane (CBM) production will be approved as wildcat gas wells under existing rules. Well density is limited to one well per section, setback at least 990 feet from the section lines. Locations must be advertised and the ten day waiting period prior to approval applies.

2. Wells drilled for the purpose of exploring for or producing CBM must meet the drilling, completion and plugging requirements of any other well under the Board's general rules and regulations. However, wells that are drilled to the top of the target coal and have casing set and cemented back to surface need not be equipped with a separate string of production casing.

3. Requests for temporary spacing units of less than 640 acres or for increased well density for a test pod of wells or for a "pilot" project of limited scope may be authorized by the Board after notice and public hearing. Notice of public hearing will be published by the Board in the manner customarily used by it; the applicant must provide actual notice of proposed hearing to the record owners as required under Section 82-11-141(4)(b), MCA, and to water right holders in the temporary spacing unit proposed for the pilot project.

4. An application for public hearing to establish permanent spacing and field rules for a CBM development project must include such information as is customarily required for establishment of well spacing and field rules for conventional gas production. Applicants must also present at the hearing a field development plan including maps, cross-sections and a description of the existing hydrologic resources, including water wells or springs that may be affected by the project, and a copy of the water mitigation agreement being used or proposed for use in the project area. The applicant must provide an estimated time frame for development activities, a monitoring/evaluation plan for water resources in the project area, the proposed number and location of key wells which will be used to determine water levels and aquifer recovery data, and water quality information for target coal aquifers available at the time of hearing. The Board will

publish its customary notice of public hearing; the applicant must provide actual notice as required in Section 82-11-141(4)(b), MCA, and must notify all record water rights holders within one-half mile of the exterior boundary of the proposed field area.

5. Notice to water rights holders must be given by mailing the written notice, postage prepaid, to the address shown by the records of the Department of Natural Resources and Conservation at the time notice is given. The notice must briefly summarize the application and provide the time and place of the public hearing.

6. Coal bed methane operators must offer water mitigation agreements to owners of water wells or natural springs within one-half mile of a CBM field proposed for approval by the Board or within the area that the operator reasonably believes may be impacted by a CBM production operation, whichever is greater. This area will be automatically extended one-half mile beyond any water well or natural spring adversely affected. The mitigation agreement must provide for prompt supplementation or replacement of water from any natural spring or water well adversely affected by the CBM project and shall be under such conditions as the parties mutually agree upon. Mitigation agreements are intended to address the reduction or loss of water resources and may exclude mechanical, electrical, or similar loss of productivity not resulting from a reduction in the amount of available water due to production from CBM wells. The Board will review areas covered by mitigation agreements as part of its review of field development proposals.

7. Coal bed methane production will be reported on Board Form No. 6 and will include produced volumes of both gas and water. Form No. 6 will be filed for all unplugged CBM wells even if the only production reported is water. An initial pre-production static water level will be reported for each newly completed CBM well at the time Form No. 4 is filed. For those wells designated as key wells, the operator will report an annual shut-in static fluid level following a shut-in period of at least 48 hours or such lesser time as is adequate to determine a stabilized level. For those wells designated as dedicated monitoring wells, a quarterly fluid level will be reported.

8. The requirement to run electric or radioactive wells logs will be met if the operator logs one well in each quarter section to the deepest target CBM horizon. The minimum log required is a gamma-ray log, which may be run through pipe; however, a gamma ray-density log in open hole is recommended.

9. Approval of development plans and establishment of field rules and spacing requirements will be under such conditions and time frames as the Board may deem adequate. Done and performed by the Board of Oil and Gas Conservation of the State of Montana at Billings, Montana, this 9th day of December, 1999.

BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

_____

Dave Ballard, Chairman

_____

Denzil Young, Vice-Chairman

_____

George Galuska, Board Member

_____

Jack King, Board Member

_____

Allen Kolstad, Board Member

_____

Stanley Lund, Board Member

_____

Elaine Mitchell, Board Member

ATTEST:

Terri Perrigo, Executive Secretary

MONTANA DEPARTMENT OF NATURAL RESOURCES

AND

CONSERVATION

BOARD OF OIL AND GAS CONSERVATION

Record of Decision:

Statewide Coal Bed Methane Exploration and Development

March 26, 2003

1.0 Introduction

The Montana Board of Oil and Gas Conservation (MBOGC), the Montana Department of Environmental Quality (MDEQ), and the Bureau of Land Management (BLM) as joint lead agencies, prepared the Montana Final Statewide Oil and Gas Environmental Impact Statement (FEIS) and Proposed Amendment of the Powder River and Billings Resource Management Plans (RMPs). A Draft Environmental Impact Statement (EIS) was prepared to examine the impacts of the proposal and alternatives. The Final EIS was prepared based upon comments received on the draft. The FEIS focused on the potential impacts of coal bed methane (CBM) exploration and production throughout the state. The affects of anticipated conventional oil and gas development were also analyzed.

As lead agencies, the MBOGC, MDEQ and the BLM are responsible for compliance with the Montana Environmental Policy Act (MEPA), and National Environmental Policy Act (NEPA), respectively. However, the information and proposed decisions discussed in the plan are not final until the State agencies and the BLM sign a Record of Decision (ROD). This document is the ROD for the MBOGC and does not in any way make decisions for the BLM.

1.1 Purpose and Need

The purpose of the FEIS was to analyze potential impacts from oil and gas activity, particularly from CBM exploration, production, development, and reclamation statewide. The MBOGC is responsible for regulating the development of state and fee oil and gas resources. This FEIS was used to analyze options for CBM development including mitigating measures that would help minimize the environmental and social impacts related to these activities. The alternatives analyzed provided a range of management options for conducting and permitting CBM development.

The preferred alternative (Alternative E) is the State permitting agencies proposed outline for altering the current oil and gas program to allow for CBM development. The FEIS focused the analysis on the oil and gas development issues not covered in the current program, such as water management from CBM production.

1.2 Background Information

The MBOGC currently manages CBM developments based on the Stipulation and Settlement Agreement reached in the First Judicial District Court, Lewis and Clark County, between the MBOGC and the Northern Plains Resource Council, Inc., on June 19, 2000. The Stipulation also provides for the preparation of a comprehensive supplemental state-wide programmatic EIS pursuant to the Montana Environmental Policy Act, 75-1-101 *et seq*. and the Department's regulations at A.R.M. 36.2.521 *et seq*. addressing the environmental consequences of CBM exploration, development, production, reclamation and closure. The MBOGC may fulfill this obligation by participation in, and providing final approval of another programmatic or regional EIS prepared pursuant to MEPA or NEPA.

The MBOGC has fulfilled this obligation by participating in this EIS process and providing approval of the Final EIS. The stipulation and settlement agreement remains in effect until this Record of Decision (ROD) is formulated and signed for this FEIS.

2.0 Decisions

2.1 Decision Being Made

After considering the proposal, issues, alternatives, potential impacts, and management constraints, MBOGC has selected Alternative E along with the CBM Plan of Development (POD) outline. The Preferred Alternative (E) is approved for implementation as described in the FEIS and this Record of Decision (ROD).

A number of mitigation measures to further reduce environmental impacts of the proposal were developed pursuant to the Montana Environmental Policy Act, or MEPA (§ 75-1-201(5)(b), MCA), and are described in Chapter 2 of the FEIS. CBM Operators can implement these mitigation measures voluntarily, or, MBOGC can incorporate them into a permit or field order depending on site-specific conditions, and upon the authority of the MBOGC to impose them.

The basis for this decision is an analysis conducted by the State co-lead agencies and the BLM. This analysis is documented in the *Montana Final Statewide Oil and Gas EIS and Proposed Amendment to the Powder River and Billings RMPs*, published in January 2003.

2.2 Approved Oil and Gas Program Amendments (Conditions)

The amendments under consideration consist of a number of oil and gas related determinations for CBM development. These determinations would apply to state and fee mineral operations regulated by the MBOGC. The determinations include the following:

1. Exploration and development of CBM resources on MBOGC regulated lands are allowed subject to agency decisions, lease stipulations, permit requirements, and surface owner agreements.

2. Operators will be required to submit to the MBOGC a Project Plan of Development (POD) outlining the proposed environmentally responsible development of an area when requesting CBM well densities greater than 1 well per 640 acres.

3. The POD will be developed by the CBM operator in consultation with affected surface owner(s), and other involved permitting agencies.

4. The POD is to be submitted in draft form so that it can be reviewed and any changes made prior to submission to the MBOGC for approval.

5. The POD will include the following sub-plans: a Water Management Plan, a Surface Use Plan, and a Reclamation Plan.

6. A Water Management Plan for Exploration will be required for CBM exploration wells drilled under statewide spacing rules and for each POD.

7. Produced Water Management Plans and permits would be approved by the MBOGC. The MBOGC may request copies of surface agreements, water well mitigation agreements, or certifications that such agreements were offered, as part of the permit or POD submission.

8. MBOGC will permit the construction of CBM water impoundments under its current regulatory authority for oil and gas related earthen pits. The MBOGC intends to conduct a scientific investigation of the siting, construction, and operation of such impoundments and will use the results of that investigation to review its existing rules and policies. If necessary the MBOGC will adopt new rules or modify existing rules as appropriate.

9. There would be no discharge of produced water (treated or untreated) into the watershed unless the operator has an approved MPDES permit or a non-significance review by MDEQ (see section 5.3.3 "Montana Water Quality Act" below) and can demonstrate in the Water Management Plan how discharge could occur in accordance with water quality laws without damaging the watershed.

10. To minimize surface disturbance as many wells as economically and technically feasible will be co-located on a single well pad.

11. Well spacing rules would determine the number of wells per coal seam per designated spacing unit.

12. The number of wells connected to each compressor would be maximized and natural gas-fired engines for compressors and generators or other emission controls would be required.

13. In areas where sensitive resources including people are present alternative fuels (including electricity) or other sound mitigation measures may be used for compressor operations if it helps to reduce the sound level. The MBOGC may consider establishing the sound level and minimum distance to sensitive sound receptors as part of the POD approval process or as a rule or MBOGC Order.

14. Operators will be encouraged to post and enforce speed limits to reduce fugitive dust emissions, minimize effects to wildlife, and help maintain regional air quality.

15. Proposed roads, flowline routes, and utility line routes would be located to follow existing routes, transportation corridors or areas of previous surface disturbance when possible.

16. Operators will be encouraged to place roads on or adjacent to tract boundaries where practical to reduce impacts on residential and agricultural lands. However, the MBOGC recognizes that surface owner agreements may govern road route, type of road, maintenance and eventual disposition or reclamation of roads and transportation facilities.

17. MBOGC will encourage operators and private owners to agree to the use of CBM-related roads for CBM operations only to reduce public access and overuse.

18. When wells are abandoned, the associated oil and gas roads would be closed, or could remain open at the surface owner's discretion. If the roads were requested to be closed they would be rehabilitated.

19. Mitigation measures or stipulations designed to protect natural resources will be attached to APDs as appropriate, additional site specific mitigation measures will also be attached to APDs as site conditions warrant. POD's approved by MBOGC Order will be subject to those stipulations or conditions imposed by the MBOGC. The MBOGC may choose to delegate approval of supplemental POD's or changes to existing POD's to its staff.

To the extent practical, the MBOGC's staff and the appropriate office of the Bureau of Land Management will co-operate in developing common procedures that will allow a single comprehensive Plan of Development for areas involving

federal, state and private land to be submitted for approval to the permitting agencies. BLM and MBOGC will develop procedures to coordinate the review of POD's by appropriate affected agency staff and other agencies having permit authority, and provide a coordinated recommendation to the MBOGC and BLM managers for approval, modification, or rejection of POD's. The MBOGC will consider preparation of a step-by-step guideline for preparation and submission of the Project Plans of Development. MBOGC staff will review the document currently being written by BLM, and may choose to adopt all or portions of this document as interim guidance until a state/private land guidance document can be prepared. This guideline will provide direction to industry to ensure that all necessary information is submitted to federal and state decision makers.

2.3 Decision Not Being Made

This decision does not include approval of any specific oil and gas exploration, production, or development activities. Furthermore, this decision does not apply to minerals administered by the BLM or federal minerals under the surface of lands managed by the following federal agencies: Forest Service, National Park Service, Bureau of Indian Affairs, Fish and Wildlife Service, or federal minerals under private lands within the administrative boundaries of the National Forest System Lands. Additionally, this decision does not apply in any way to minerals administered by sovereign Native American Tribes.

The FEIS documents the direct, indirect, and cumulative effects that may result from the development of CBM based on the reasonably foreseeable development scenario activities analyzed in the study. The analysis acknowledges that a decision to allow CBM development recognizes that current oil and gas leases include the right to develop CBM under standard lease terms and conditions. MBOGC stipulations, project plan requirements or specific mitigation measures directing CBM development are attached at the APD approval stage. Thus, the analysis assumes that appropriate environmental protection measures will be implemented as required by project plans and that all site-specific developments will be sufficiently scrutinized prior to APD approval. These assumptions do not represent proposed or planned activities. They were analyzed in the FEIS to disclose the range of long-term effects that may result from adoption of the CBM development criteria under Alternative E – the selected alternative.

2.4 Implementation

This decision is effective upon signing of this ROD. The MBOGC will start accepting applications for drilling permits for exploratory wells and for CBM development projects with fully completed PODs 15 days following the signing of this ROD. APD approvals for wells in proposed development projects will be issued once PODs have been reviewed and approved by the MBOGC at a hearing held to increase well density to project level, or for the purpose of approving a CBM project, supplemental project, or project modification. Wells in approved projects will be approved administratively provided the proposed well complies with the approved plan and the MBOGC order approving the project. The MBOGC may choose to adopt polices by Board Order or rule to establish procedure for approving modifications of existing approved projects or expansion of approved projects.

3.0 Public Involvement

This section summarizes the public participation efforts for identifying issues and comments received during the preparation of the Draft and Final EISs.

3.1 EIS Public Participation

3.1.1 Public Involvement in Identifying Issues

A public participation plan was prepared to provide management and team guidance for developing the RMP EIS and Amendments, and to ensure public involvement during the entire document preparation process. During the scoping of the EIS, formal and informal public input was encouraged and sought.

Preparation of the FEIS began with the publishing of a Notice of Intent in the *Federal Register* on December 19, 2000 informing the public of the intention to plan and announcing the notice of availability for the planning criteria. Extensive public involvement occurred during preparation of the 2003 FEIS to identify and address relevant environmental issues.

The public was informed of, and involved in, the EIS process through additional *Federal Register* notices, news releases, direct mailings, and public meetings. Several news releases were published in local papers, announcing the beginning of the plan, encouraging public involvement, and publicizing the availability of the planning criteria. Brochures were mailed to over 1,000 individuals, groups, and agencies in December 2000 notifying the public of the expected issues and upcoming public scoping meetings.

Public scoping meetings were conducted in five towns across the State with a total attendance of 329 people. These meetings were held in January 2001 at Ashland, Billings, Broadus, Miles City, and Helena.

A total of 311 written communications, with more than 2,100 comments, were received after the public scoping meetings. Most of these written comments reiterated oral comments from the public meetings. Oral and written comments covered a spectrum of issues, but the majority was concerned with the management of water, lands, air, and

wildlife resources. Records of public comments and concerns are on file in the BLM Miles City Field Office.

A *Public Comment Summary and Recommendations Report* was prepared and made available electronically and in hardcopy in March 2001. This report summarizes the comments received from the public scoping meetings. These issues and the alternatives are summarized below and presented in detail in the Final EIS.

3.1.2 Summary of Public Involvement on the Draft and Final EIS

On February 15, 2002, a Federal Register notice was published beginning the comment period for the DEIS. Approximately 1,500 copies of the DEIS/RMP Amendment were distributed to the public and other federal and state agencies for comment. Additionally, a copy was posted on the Montana Department of Environmental Quality's (MDEQ's) web site for public downloading. The DEIS presented five alternatives including the no action alternative, and the agencies' preferred alternative (Alternative E).

The agencies received more than 8,800 e-mails, faxes, letters, cards and oral statements on the Draft EIS during the public comment period which ran through May 15, 2002. In addition to the written comments six public hearings were held at communities across the state in April 2002, to receive oral comments on the Draft EIS. These communities are Billings, Bozeman, Broadus, Crow Agency, Lame Deer, and Helena. Over 700 citizens attended these hearings.

Transcripts from the public hearings are available on the BLM Miles City Field Office Internet site at http://www.mt.blm.gov/mcfo. All participants were encouraged to submit written comments following their oral testimony. These hearings were also a forum for the MDEQ to collect public comments on the proposed CBM Produced Water General Discharge Permit (CBMPW-GDP Permit No.: MT-G390000).

From the 8,800 communications, more than 25,000 comments were made on the DEIS. Many of the comments tended to be polarized between those supporting CBM development urging selection of Alternative E, and those opposed to CBM development requesting additional safeguards be put in place to protect surface owner rights and downstream resources from impacts. Comments that presented new data, questioned facts or analysis, or raised questions or issues bearing directly upon the alternatives or environmental analysis were responded to in Chapter 5 of the Final EIS. Comments expressing personal opinions or statements were carefully considered in the decision-making process for developing the FEIS but not responded to directly. Records of all comments are available at the BLM Miles City Field Office.

3.1.3 Protest Procedures

The EPA Notice of Availability for the Final EIS was published in the *Federal Register* on January 17, 2003. The public was given the opportunity to protest the BLM's preferred plan to the BLM Director in Washington D.C. following the instructions included in the FEIS. The 32-day protest period ended February 18, 2003.

The MBOGC opened a public comment period on the final EIS on January 18th, 2003; the comment period ended on February 18th, 2003. Additionally, the MBOGC scheduled and held a public hearing on February 6, 2003 in Billings to receive comments from the public prior to proceeding with the ROD. Copies of written comments were distributed to each MBOGC member and a transcript of oral testimony from the public hearing has been prepared. Public comments and the transcript are available for public review at the MBOGC's Billings office. The MBOGC received 936 written comments, 36 of which generally were not supportive of the preferred alternative and/or CBM development in general; 900 of the comments generally favored the preferred alternative and supported CBM development.

3.2 Consultation with Other Agencies

Federal and state agencies were contacted individually to gather input for the EIS. Consultation was conducted with other resource management agencies at the Federal and State level to identify common concerns for the planning effort.

In addition to the two state lead agencies, a number of other state departments were consulted, including the Montana Bureau of Mines and Geology, the Montana Department of Fish, Wildlife, and Parks, the Montana Department of Natural Resources and Conservation, and the Montana State Historic Preservation Office. Additional state agencies from Wyoming who participated in the preparation of the EIS and various technical meetings included the Wyoming Department of Environmental Quality, Wyoming State Engineers Office, and the Wyoming Office of Federal Land Policy.

Federal agencies participating as cooperating agencies included the EPA, Bureau of Indian Affairs (BIA), and the Department of Energy (DOE). In addition to these agencies the Department of Agriculture (DOA) Forest Service and the Wyoming BLM offices in Buffalo and Casper contributed to the review and comment processes for the FEIS.

As required by Section 7 of the Endangered Species Act (ESA) of 1973, the BLM prepared and submitted a biological assessment to the U.S. Fish and Wildlife Service (FWS). This document defined potential impacts on threatened and endangered species as a result of management actions proposed in the EIS. The FEIS contains the biological assessment and FWS biological opinion on the impacts from the amendments to threatened and endangered species.

4.0 Alternatives

The FEIS described five alternatives that analyzed different actions regarding the management of CBM activities. The "No Action" Alternative describes and analyzes current regulation of CBM activities by MBOGC, MDEQ, and the BLM while the other four alternatives describe and analyze other management actions that provide different methods of protection to other resources and land uses from CBM activities. The preferred alternative (Alternative E) identified in the Final EIS has been selected for implementation. The decision took into account the impacts of the alternatives as well as public comment and the potential for the Alternative E to resolve the issues.

4.1 Alternatives Considered

Chapter 2 of the FEIS describes the alternatives analyzed and the alternatives excluded from detailed analysis. The alternatives analyzed in detail are described briefly below.

4.1.1 Alternative A—No Action (Existing CBM Management)

Under the Stipulation and Settlement Agreement the MBOGC would be limited to issuing, upon proper application by the operator, 200 CBM permits for water quality, quantity, and for testing the coals. Additional restrictions limit the number of wells per pod to nine and pods per township to one, and prohibit the discharge of any water into the waters of Montana or the U.S. In addition to these exploration wells, the agreement specifies that Fidelity Exploration and Production (formerly Redstone Gas Partners) could apply to the MBOGC for up to 90 additional wells for its CX Field Pilot Project in southeastern Big Horn County. The total producing wells in the CX Pilot Field cannot exceed 250. In addition to these, Fidelity can drill another 75 exploration wells for a total of 325 wells. Discharge of production water was arranged through the MDEQ, via a Montana Pollutant Discharge Elimination System (MPDES) permit. The current Fidelity MPDES permit allows for up to 1,600 gallons per minute (gpm) to be discharge into the Upper Tongue River from up to 11 discharge points.

Testing of CBM wells that have been previously drilled would continue, provided no water is discharged to the waters of Montana or the U.S. No commercial production of methane would occur from any of the wells. For each landowner where test wells are drilled, the operator conducting the drilling would enter into a water well mitigation agreement. All wells drilled under the terms of the settlement agreement would be required to comply with the MBOGC's regulations. After test wells are completed, they would be abandoned or plugged according to the MBOGC's regulations.

4.1.2 Alternative B—CBM Development with Emphasis on Soil, Water, Air, Vegetation, Wildlife, and Cultural Resources

The State regulatory agencies would review and approve CBM activities with an emphasis on natural and cultural resource protection. The State would use stringent management measures to minimize or eliminate adverse impacts to other resources during development. Examples of such management measures would include; requiring all compressors to be fueled by natural gas; and water from producing wells would be injected into a different aquifer. Environmental mitigation measures envisioned to reduce impacts on various resources include the harvesting of commercially valuable trees during construction of ROWs and roads; use of CBM-related roads would be limited to industry; speed limits would be posted and enforced to reduce fugitive dust emissions; operator's weed prevention plans must include measures to prevent the spread of weed seeds from any vehicle or equipment; and wildlife surveys required by the EPA to identify endangered status species would be conducted prior to the approval of APDs.

4.1.3 Alternative C—Emphasize CBM Development

The State regulatory agencies would review and approve CBM activities with an emphasis on facilitating production of CBM. The State would use the least restrictive mitigation measures to minimize or eliminate adverse impacts to other resources. Examples of such measures would be to authorize the discharge of water produced with CBM onto the ground or into the water bodies when the discharge water meets applicable standards. Compressors could be fueled by gas, diesel, electricity, or other means as long as other permitting standards, such as air quality, are met.

4.1.4 Alternative D—Encourage CBM Exploration and Development While Maintaining Existing Land Uses

The State regulatory agencies would review and approve CBM activities with an emphasis on maintaining or enhancing land uses in combination with CBM development. The State would use mitigation measures, as much as possible, that compliment the needs of landowners and other lessees. Management of water produced with CBM would be greatly influenced by the surface owner. The water could be made available for beneficial uses or may be required to be reinjected. Location of facilities, such as compressors, would be influenced by the needs of the landowner.

4.1.5 Alternative E—Preferred Alternative

The MBOGC would review and approve CBM activities in a manner that facilitates efficient and orderly CBM activities while providing the appropriate type of resource protection on a site-specific basis. Different management actions, such as discharge, impoundment, re-injection or beneficial use, would be applied to water produced with CBM. Likewise, different management actions such as location, size, and mufflers (as required) would be applied to compressors. Also, property rights considerations, such as the handling of surface disturbance, would be handled by requiring the operator to consult with the owner of the surface rights.

Alternative E is the MBOGC's preferred alternative and would provide management options to facilitate CBM exploration and development, while sustaining resource and social values, and existing land uses.

4.1.6 Environmentally Preferred Alternative

Identification of the environmentally preferable alternative involves difficult judgments because the effects to the biological, physical and human environment must all be considered along with the social, economic and other requirements of present and future generations. On the basis of the effects on the biological and physical resources only Alternative A is the environmentally preferable alternative because of the limited number of wells which would be drilled and the minimal production infrastructure that is associated with this reduced development scenario. On the basis of social and economic considerations, Alternative E would be recognized as the environmentally preferable alternative because it combines an assortment of management actions to commence CBM exploration and development without economic constraints while still supporting resource and social values, and protecting existing land uses.

5.0 Rationale for the Decisions

5.1 Rationale for the Selected Alternative

The MBOGC has selected the Proposed Action for development of CBM within the State of Montana after considering the potential impacts of all the alternatives. The selected alternative will best meet the purpose and need to develop a program for the exploration, development, production and reclamation of CBM while minimizing the long-term adverse environmental and social impacts by imposing statutorily authorized conditions. Operators will be required to submit a Project Plan of Development (POD) outlining the proposed environmentally responsible development of an area when requesting CBM well densities greater than 1 well per 640 acres. The MBOGC has selected this alternative over the No Action Alternative because it meets all requirements of state statutes and rules.

All practicable means to avoid or minimize environmental harm have been included in the selected alternative. For example, combined water management options have been selected to allow for the greatest flexibility to select the most environmentally sensitive option to protect area water quality and Tribal water resources. Air quality protection measures selected combine methods for minimizing air pollutants during the construction, operation and reclamation phases of development. These include reducing fugitive dust from roads during construction and maintenance activities, decreasing compressor emissions through the use of natural gas and electric boosters and diminishing of natural gas releases from area mines and seeps by recovering the gas that may otherwise be lost. Surface disturbances will be reduced by co-locating multiple vertical wells and, if necessary to further reduce surface impacts, directionally drilled wells to deeper coals on the same well pad and through the use of placing all utilities along existing routes where practical. These measures, together with other general environmental mitigation measures, will meet all applicable requirements and, achieve water quality objectives, while CBM development is taking place in the State of Montana. Furthermore, the use of these adaptive management approaches allows for incorporation of future technology, which may improve the options available to minimize environmental effects.

The following sections discuss in detail the rationale for selection of Alternatives E.

5.2 Resolution of Issues

The purpose of developing and presenting alternatives is to allow the decision maker an opportunity to address and resolve issues recognized during the scoping process. Alternatives meet the purpose and need for doing the EIS, and balance ways to address different resource issues. The resolution of key issues forms the framework of an alternative, with the resolution of lesser issues included around the alternative's central idea. This section describes how those key issues were resolved under the selected alternative. The development of alternatives for this EIS centered on addressing regulatory issues in seven general areas:

- Air quality
- Coal mines
- Coal bed methane
- Hydrology
- Realty
- Indian trust resources
- Environmental mitigation

Although other relevant issues were considered, these key issues played a major role in defining the alternatives to be analyzed in detail.

5.2.1 Air Quality

Potential changes in ambient air quality from CBM activities, such as reduced visibility, air quality emissions, dust emissions, harmful gases, and changes in climate constituted the majority of issues related to this resource.

The selected alternative resolved the air quality issues by maximizing the number of wells connected to each compressor to reduce overall emission sources; requiring natural gas engines for compressors and generators so actual emissions would be further reduced; requiring electrical boosters when natural gas engines could not be used to maintain low emissions; requiring operators of federal leases to post and enforce speed limits to reduce fugitive dust emissions; and limiting CBM-related roads to industrial use through construction of additional fences and gates to minimize public access and overuse, thereby reducing fugitive dust and auto emissions. Additionally, the current MDEQ air permitting process includes analyses of equipment emissions and associated ambient impacts. Emission sources that may violate NAAQS (ambient standards) will not be issued a permit.

5.2.2 Coal Mines

This issue centered around buffer zone requirements for active coal mines, as well as the ability of adjacent or nearby coal companies to recover bonds and determine the effects on aquifer reconstruction. The issue also included CBM water discharge affecting new coal mines, the effects on oil and gas development, loss of coal production resources from CBM development, loss of methane resources because of venting, and subsurface coal fires.

The selected alternative included provisions for CBM producers to work with surface owners and mine operators with regards to placement of well locations and groundwater removal. The use of these agreements will reduce the impacts on mine operations and establish means to determine aquifer impacts and responsibilities during reconstruction. It is conceivable that CBM operations may reduce water in coal mines and create a situation where mines would need to obtain water for dust control, however this is viewed as a beneficial use of CBM produced water. Furthermore, the EIS analysis concluded that CBM development would not impact conventional oil and gas recovery due to the different geological strata produced, but may inhibit seismic prospecting in certain areas. Finally, the analysis found the chances of increasing methane venting from coal mines and subsurface coal fires were exceedingly remote.

5.2.3 Coal Bed Methane

The issue considered was the restriction of CBM exploration and production methods. Options included directional-drilling requirements; the number of coal seams per well bore, and chronological seam development. Other issues addressed were the drainage of methane from federal minerals and the effect of over-pumping water.

The selected alternative includes a requirement for directional drilling of deeper coals to reduce surface disturbances. No restrictions were included to require multiple coal seams per well bore or to require chronological coal seem development because it was concluded that the impact reduction by these requirements would be negligible. The EIS analysis also concluded that the effect of over-pumping water might cause some slight (<1/2 inch) subsidence but this does not represent a significant impact to surface lands.

5.2.4 Hydrology

Hydrology issues brought up during scoping included inspection, treatment, storage, and conveyance of CBM-produced water, short- and long-term effects on groundwater and surface water, impacts on water quality, and water rights. Requirements for site-specific Water Management Plans, treatment, conveyance methods, and the beneficial use of exploration and production water were considered.

The preferred alternative combines water management options emphasizing beneficial use of produced water. This adaptive management approach allows for the greatest flexibility to select the most environmentally sensitive option to protect area water quality and water resources. This also allows for development of future technologies that may improve inspection, treatment, storage, and conveyance methods. The selected alternative also requires that each CBM operator requesting spacing greater than 1 well per 640 acres develop a POD that includes a Water Management Plan (WMP). The WMP is required for both exploration wells and development sites. The WMP will detail how the operator plans to manage CBM produced water so that there would be no unnecessary or undue degradation, as defined by MDEQ, of water quality in any watershed. With regards to water rights, the operators are required under the selected alternative to offer water well mitigation agreements to affected surface owners within a one-mile radius of the well or project. Users of existing surface waters (irrigators) will be protected by the use of MPDES discharge permits (or non-significance review) and/or the development of TMDL standards for each river/stream affected in the basin.

5.2.5 Realty

Realty issues center on requirements for ROW corridors, power line placement, and use of or abandonment of roads from CBM development. Other issues included requirements for buried powerlines, installation of raptor safe power line equipment, and multiple utility corridor use.

The selected alternative includes requirements for the placement of proposed roads, flowline routes, and utility line routes along existing routes or areas of previous surface disturbance where possible, this will reduce surface

disturbances. Furthermore, road placement would be limited to tract boundaries where practical to reduce impacts on residential and agricultural lands. In an effort to help meet surface owner needs, the selected alternative requires operators to address in the POD was consulted for input into the location of roads, pipelines, and utility line routes. Powerlines are also a POD consideration; the operator will demonstrate how the proposal for power distribution would mitigate or minimize impacts on affected wildlife. For example, on BLM lands the operator may be required to bury a portion of the powerlines near sage grouse habitat to safely eliminate use by raptors, but when allowed to use aboveground lines, raptor-safe specifications are required. When wells are abandoned under the selected alternative, the associated oil and gas roads would remain open or be closed at the surface owner's discretion. If the roads were requested to be closed they would be rehabilitated.

5.2.6 Environmental Mitigation

Possible environmental mitigation measures to address resource issues presented in the scoping comments have been addressed under the selected alternative. These include commercially harvesting trees within rights-of-way (ROWs); implementation of high fire danger restrictions; road use enforcement; road placement restrictions; wellhead camouflage requirements; conducting wildlife surveys; and the use of early successional species along with appropriate late serial stage native species for revegetation.

In addition to the requirements outlined in the POD and in the WMP, the selected alternative has incorporated general environmental mitigation measures that will further reduce potential impacts. Subject to landowner preferences and the MBOGC's regulatory authority, these mitigation measures include provisions for the protection of visual resources, surface disturbance, fire danger, noxious weeds, air pollutants, and wildlife protection.

5.3 Selected Alternative Compliance with Legal Mandates

This section explains how the selected alternative satisfies the States' major legal, regulatory, and policy mandates or objectives. It is not exhaustive of all applicable management constraints, but explains why the alternatives were selected and how they conform with legal, regulatory, and policy requirements. The selected alternative has been chosen because it provides the best means to meet the regulatory requirements with the least likelihood of causing long term environmental impacts while still developing this important resource.

5.3.1 Montana Environmental Policy Acts (MEPA) Cumulative Effects Assessment

The Montana Environmental Policy Act (MEPA) mandates that State agencies, such as MBOGC and MDEQ, consider the potential impacts of an action prior to making a decision. The impacts of the Proposed Action have been evaluated in the Final Environmental Impact Statement prepared in 2003 by the MBOGC, MDEQ, and the BLM with EPA, BIA, DOE, and the Crow Tribe of Indians as official cooperators. Chapter 4 of the FEIS provides cumulative effects analysis.

There are no related future actions under concurrent consideration that, when considered in conjunction with past and present actions, are likely to result in additional significant impacts. Should future actions be proposed which have or may have cumulative effects, additional analysis pursuant to applicable requirements of MEPA would be conducted. The agencies have completed the required "hard look" at the potential impacts of CBM development and are issuing this ROD as the final step in the MEPA process.

5.3.2 Clean Air Act

Requirements of the Clean Air Act of Montana and the federal Clean Air Act will be met through compliance with new air quality permits for all compressor stations and other stationary sources. This includes abiding by requirements of the State Implementation Plans.

The Montana Department of Environmental Quality has reviewed the proposed activities and determined that the emissions associated with these projects would not trigger any additional air quality permitting requirements for the types of facilities associated with CBM development.

In the case where emissions are anticipated to exceed the federal or state ambient air quality standards, permits would not be issued. The current MDEQ air permitting process includes analyses of equipment emissions and associated ambient impacts. Therefore, this activity can be undertaken in accordance with the Montana and Federal Clean Air Acts.

5.3.3 Montana Water Quality Act

The selected alternative and required water management plans in combination with the MPDES (or other authorization) and Class V Injection permits will effectively prevent the degradation of water quality by elevated SAR value production water and trace pollutants to surface or ground waters. The water management plans will combine water handling practices and treatment methods to ensure that no undue or unnecessary degradation of water quality in any watershed occurs. These plans also limit the discharge of produced water

and provide for the capture and/or treatment of any produced water that is developed that does not meet WQA standards.

Limits in the MPDES permits (or other authorizations) will have been set so that assimilative capacities of the receiving river or stream are not exceeded. Numerical limits to the MPDES permits are currently under consideration by the Board of Environmental Review and may be set so that compliance with Montana water quality standards is required at the actual points where discharges from CBM operations enter surface waters, without the need for dilution.

Continued water management and treatment as specified in the selected alternative, including the MPDES permit conditions; will result in compliance with the Montana Water Quality Act.

5.3.4 Clean Water Act

The Clean Water Act of 1987, as amended, establishes objectives to restore and maintain the chemical, physical, and biological integrity of the nation's Water.

On August 23, 2002, U.S. District Judge Sam E. Haddon ruled that unaltered ground water discharged as a result of coal bed methane development is not a "pollutant" as that term is defined in the federal Clean Water Act (CWA). Since the court found that unaltered ground water is not a pollutant under the CWA, the court went on to hold that discharges from coal bed methane development do not require permits under the federal NPDES permit program (*Northern Plains Resource Council v. Redstone Gas Partners*, CV 00-105-BLG-SHE, District of Montana, Billings Division). In it's ruling, the court explained that it's holding applied with equal force to Montana's MPDES permit requirements. This decision is currently being appealed.

In response to this ruling, the MDEQ is in the process of developing rules that, if approved by the Montana Board of Environmental Review, would require proposed discharges from coal bed methane development to be reviewed by the MDEQ to ensure compliance with Montana water quality standards. The rules would clarify MDEQ's authority to impose limits or conditions on discharges of coal bed methane to ensure that all water quality standards, including Montana's non-degradation requirements, will be met.

Through this process, the anticipated impacts to surface waters from CBM activities would be similar if the Haddon decision is upheld or if CBM discharges are subject to permitting under the MPDES program. For the sake of analysis it is assumed in this document that CBM discharges are subject to MPDES requirements, however if this is not the case, the anticipated impacts would be similar, but the permitting process would change.

5.3.5 Safe Drinking Water Act

The Safe Drinking Water Act is designed to make the nation's waters "drinkable" as well as "swimmable". Amendments in 1996 established a direct connection between safe drinking water and watershed protection and management The selected alternative requires that each operator prepare a Water Management Plan for their proposed development project that details how the operator plans to managed CBM produced water so that there would be no degradation, as defined by MDEQ, of water quality in any watershed. Furthermore, various water handling and disposal methods are coupled to existing permit requirements such as MPDES and Class V Injection that requires accounting for discharge standards and injection concentrations.

6.0 Monitoring and Compliance

6.1 Agency Monitoring

Pursuant to State law and under the proposed drilling permits issued for CBM exploration and development, MBOGC's representatives will have access to all CBM related facilities at all times for the purpose of making inspections or surveys, collecting samples, obtaining data, auditing any monitoring equipment or observing any monitoring or testing, and otherwise conducting all necessary functions related to the permits.

Additionally, further project monitoring will be conducted during and after implementation of the selected alternative. The purpose of the monitoring is to assure compliance with the APD permit requirements and federal, state and local regulatory requirements, detect problems or unanticipated events early, provide a basis for directing remediation of problems and to verify the restoration performance predicted in the FEIS. Staff from MDEQ, MBOGC and BLM will conduct inspections and gather samples as necessary at CBM operations and facilities across the basin under the authority of the respective agencies.

6.2 Resource Monitoring

Through its approval of a Plan of Development, the MBOGC may require monitoring for resources that could be significantly impacted by activities within the scope of operations subject to MBOGC's regulatory authority. For each resource, a series of items would be monitored. Each item is evaluated by its location, technique for data gathering, unit of measure, and frequency and duration of data gathering. When duration is not specified, the duration is for the next 20 years. The monitoring plan attached to the FEIS states the event that will be evaluated and lists the key resources that will be monitored if required by the POD approval. If a significant adverse impact can be corrected by a management action within the scope of the approved POD, the change will be implemented. If the adverse impact can be corrected only by a management action that is outside the scope of this plan, an additional or supplemental POD may be required.

The Department of Natural Resources and Conservation (DNRC) Technical Advisory Committee (TAC) for the Powder

River Basin Controlled Groundwater Area has proposed a groundwater-monitoring plan for CBM development. The monitoring recommendations are incorporated into the monitoring table. A complete copy of that plan is at the end of the Monitoring appendix in the FEIS. Specific monitoring requirements incorporated into POD approvals by MBOGC will be conducted by the CBM operator and will include specific reporting requirements to the MBOGC staff and to the TAC.

The Montana Department of Fish, Wildlife and Parks in association with the BLM and FWS have developed a wildlife monitoring and protection plan. The MBOGC does not have regulatory authority to require wildlife monitoring or protection plans, cultural resources investigations or protection plans, or similar restrictions on the ability of the owner to operate and manage the land as conditions of POD or APD approval. Moreover, the MBOGC has no authority to require landowners to allow BLM, FWS, or other state wildlife management agencies to conduct wildlife monitoring or cultural investigations.

_____

Recommended for adoption:

_____
Thomas P. Richmond, Administrator
Montana Board of Oil and Gas Conservation

MONTANA ACTIVE WELLS

Designated Federal

Definition	Well_Typ	Wells
Coal Bed Methane	CBM	179
Dry Hole	DH	2
Gas	GAS	1702
Injection - Disposal	SWD	15
Injection, EOR	EOR	146
Oil	OIL	781
Water Source	WS	11

Total **2836**

Designated Indian

Definition	Well_Typ	Wells
Dry Hole	DH	1
Gas	GAS	166
Injection - Disposal	SWD	1
Injection, EOR	EOR	1
Injection, Indian Lands	ILW	72
Oil	OIL	481
Water Source	WS	5

Total **727**

Not Federal or Indian

Definition	Well_Typ	Wells
Coal Bed Methane	CBM	815
Domestic Water	WW	11
Dry Hole	DH	75
Gas	GAS	4586
Injection - Disposal	SWD	152
Injection, EOR	EOR	619
Injection, Indian Lands	ILW	45
Monitor/Observation	MON	7
Oil	OIL	5608
Water Source	WS	85

Total **12003**

Data are derived from MBOGC database and are approximate and subject to revision. Mineral ownership of older wells has not, in all cases, been verified.

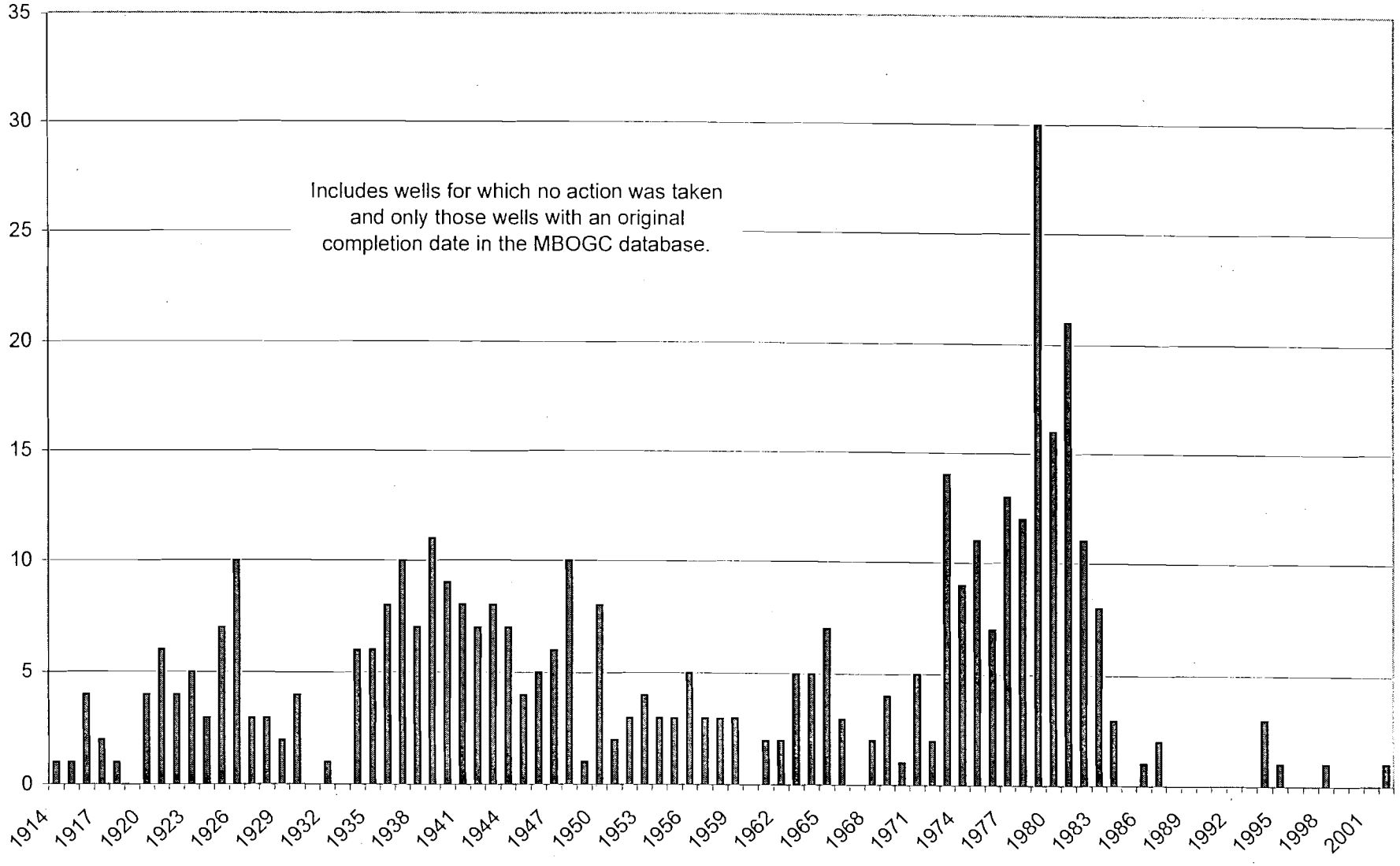
Some horizontal wells involve both federal and fee minerals and may be included only as to mineral ownership immediately under the surface location.

Orphan Well Plugging Program

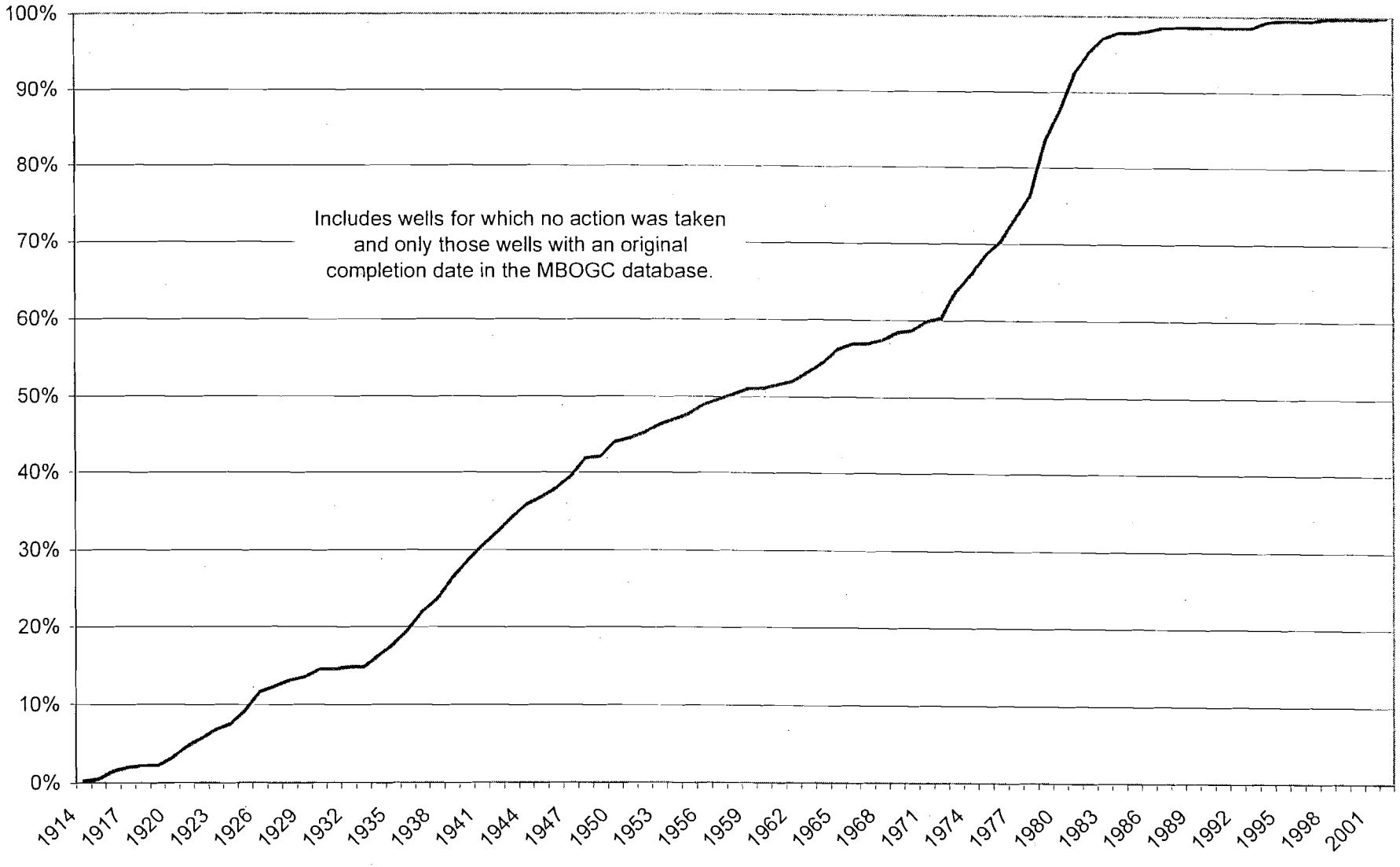
Act_Req	Act_Taken	Wells
To Be Determined		14
Plugging and Restoration		108
Surface Restoration		8
Wells/Locations Requiring Action		**130**
None (resolved without action)	None	40
Plugging and Restoration	None	31
Surface Restoration	None	2
Issues Resolved Without Action		**73**
Plugging and Restoration	Plugged and Restored	277
Surface Restoration	Plugged and Restored	1
Wells Plugged		**278**
Plugging and Restoration	Surface Restoration	6
Surface Restoration	Surface Restoration	11
Surface Restorations		**17**
Total Wells Included on Orphan Well List		**498**

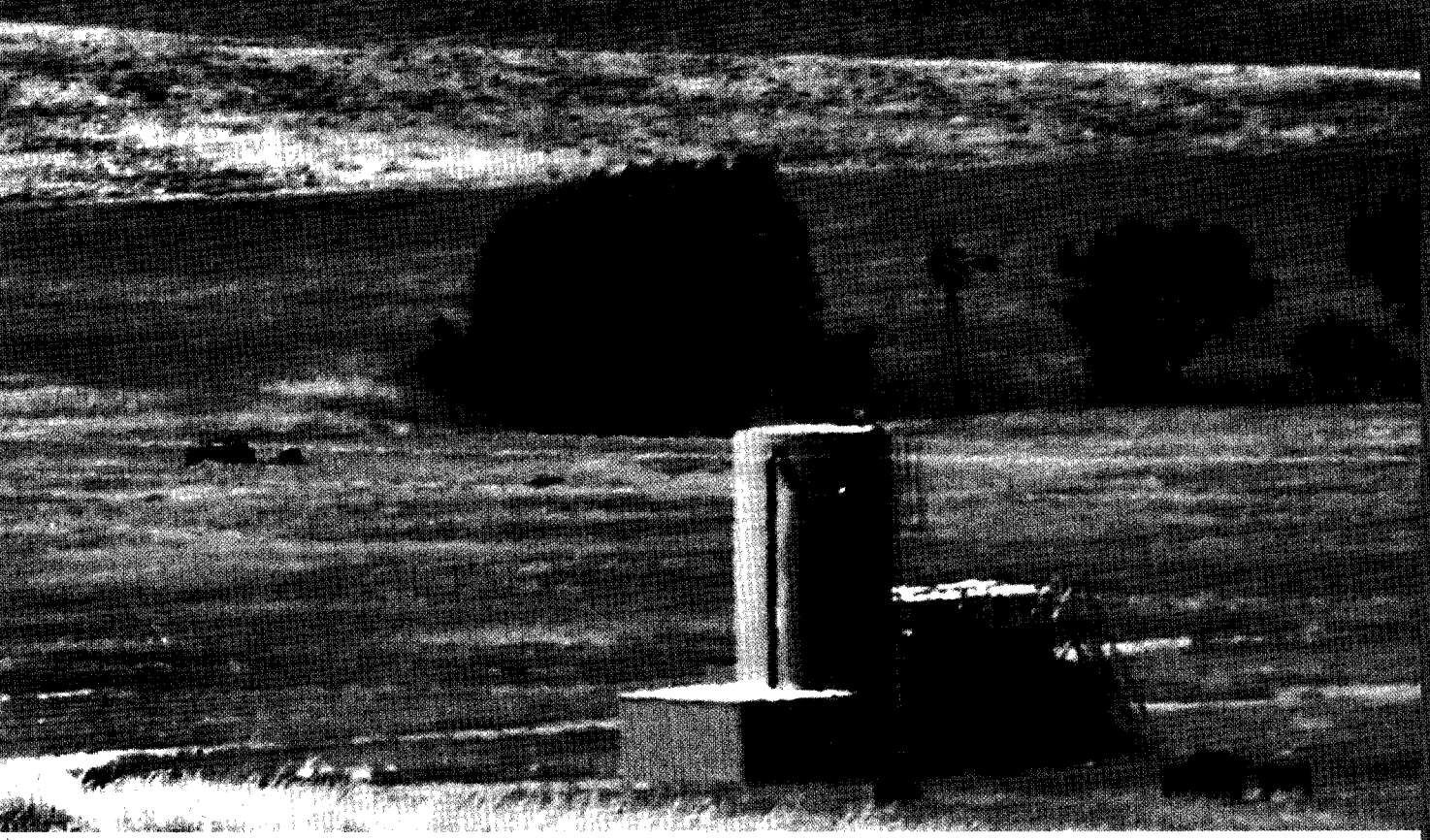
Type	Wells
Dry Holes	14
Injection (Enhanced Recovery)	28
Gas	44
Oil	18
Injection (disposal)	1
Unknown	3
Total Wells To Be Plugged:	**108**

Original Completion Dates of Wells Requiring Plugging and Restoration



Cumulative Per Cent Wells Requiring Plugging by Completion Date





BLM

Split Estate

Rights, Responsibilities, and Opportunities

www.blm.gov/bmp

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

The BLM manages 700 million acres of subsurface mineral estate nationwide, including approximately 58 million acres where the surface is privately owned. In many cases, the surface rights and mineral rights were severed under the terms of the Nation's homesteading laws. These and other Federal laws, regulations, and BLM policy directives give managers the authority and direction for administering the development of Federal oil and natural gas resources beneath privately owned surface:

- Coal Lands Acts of 1909 and 1910
- Agricultural Entry Act of 1914
- Stock Raising Homestead Act of 1916
- Mineral Leasing Act of 1920 and amendments
- Federal Land Policy and Management Act of 1976
- Onshore Oil and Gas Orders Nos. 1 and 7
- Oil and Gas Gold Book
- BLM Instruction Memorandums

Under these laws, regulations, and procedures, the leasing and development of Federal oil and natural gas resources occur in four phases:

- Planning and Lease Sales
- Permitting and Development
- Operations and Production
- Plugging and Surface Reclamation

In each phase, the BLM, the lessee/operator, and the private surface owner have rights, responsibilities, and opportunities.

Parcels of land or mineral estate ***open*** for leasing under the terms of a BLM land use plan may be nominated for leasing by members of the public. The BLM reviews every nomination to ensure that leasing the parcel would conform with the terms of the land use plan, which has been developed previously with broad public input.

The initial term for a Federal oil and gas lease is 10 years, but production can extend the lease period. Successfully bidding on and acquiring the oil and gas lease gives the lessee or designated operator the right to enter and occupy as much of the surface as is reasonably required to explore, drill, and remove the oil and natural gas resource on the leasehold. However, this right is not absolute. The BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.

Planning and Lease Sales

Permitting and Development

3814 Bond

Operations and Production

Plugging and Surface Reclamation

The Bureau of Land Management:

Must notify the public when preparing land use plans and amendments and when lease sales are pending.

Strongly encourages the operator to contact the private surface owner as early as possible in the process and **requires** the operator to make a good faith effort to negotiate surface use and access agreements.

Will invite the surface owner to participate in the pre-drilling onsite inspection.

Seeks the private surface owner's recommendations on development issues during review of the Application for Permit to Drill.

Offers the private surface owner the same level of protection provided on federally owned surface.

Carefully considers the private surface owner's views and the effects on the private surface owner's uses before determining mitigation measures.

Does not participate in negotiations between the operator and the private surface owner on the terms of surface use agreements and damage compensation.

Must bond the operator for operations and reclamation in accordance with Chapter 43, Section 3104 of the Code of Federal Regulations (3104 Bond).

Bonds the operator separately (3814 Bond) for an amount sufficient to protect the private surface owner against reasonable and foreseeable damage to or loss of *crops and tangible improvements*, if a good-faith effort does not produce an agreement with the surface owner.

Advises the private surface owner of the right to appeal the sufficiency of a 3814 Bond and **reviews** the sufficiency if the private surface owner appeals the bond amount.

Must fulfill the requirements of the National Environmental Protection Act, the National Historic Preservation Act, the Endangered Species Act, the Clean Water Act, and other applicable laws that protect surface resources.

Takes enforcement action to address operations not complying with lease and permit terms.

Must seek the private surface owner's written concurrence that reclamation is satisfactory.

The Lessee/Operator:

May participate in and comment on preparation of land use plans and amendments.

May nominate parcels for leasing.

Should coordinate and consult with the BLM and the private surface owner as early as possible.

Must participate in the onsite inspection the BLM schedules for the Notice of Staking or the Application for Permit to Drill.

Must identify the private surface owner and include the owner's name, address, and phone number in the Notice of Staking, Application for Permit to Drill, and Sundry Notices.

Must make a good faith effort to obtain an access agreement with the private surface owner.

Must certify to the BLM that he or she made a good faith effort to notify the surface owner before entry, and an agreement with the surface owner has been reached or that a good faith effort to reach an agreement failed.

Must submit an adequate 3104 Bond for operations and reclamation.

Must submit a separate 3814 Bond if efforts to obtain a surface use agreement fail.

Is responsible for making access arrangements with the private surface owner prior to entry upon the lands for the purpose of surveying, staking, or to conduct cultural or biological surveys.

Must comply with the terms of the lease, the Application for Permit to Drill, and the Conditions of Approval.

Must include a surface reclamation plan in the Surface Use Plan of Operations.

Must complete reclamation to the satisfaction of the BLM and the private surface owner.

The Private Surface Owner:

Is strongly encouraged to participate in and comment on the preparation of land use plans and amendments.

Has the right, as a member of the public, to comment on pending lease sales and proposed lease stipulations, including the right to protest the inclusion of a specific parcel in a lease sale.

Will be invited to participate in the BLM's onsite inspections during the Notice of Staking and Application for Permit to Drill process.

Can expect to be contacted by the lessee/operator prior to entry and staking to discuss the terms of the surface use agreement or waiver.

Is entitled to the same level of surface protection that is provided on Federal surface.

Will be asked to sign the statement certifying the effort to conclude a surface use agreement.

Can respond to the BLM's request for recommendations on addressing surface construction and reclamation issues.

Will have his or her views on protection standards and limits carefully considered as the BLM determines the surface use conditions of approval.

Has the right to appeal the sufficiency of the 3814 Bond to the BLM and will be advised of this right by the BLM if a 3814 Bond is necessary.

Is entitled to seek compensation from the operator for damages to *crops or tangible improvements*, and if not satisfied, can file a claim in court for payment under the 3814 Bond.

Will have bond-sufficiency appeals reviewed by the BLM in a timely manner.

Is encouraged to report non-compliance incidents to the BLM.

Can expect to have appropriate inspection and enforcement action taken.

May concur that final reclamation is satisfactory or recommend additional actions.

The Bureau *of* Land Management

Our Vision

To enhance the quality of life for all citizens through the balanced stewardship of America's public lands and resources.

Our Mission

To sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

Our Values

To serve with honesty, integrity, accountability, respect, courage, and commitment to make a difference.

Our Priorities

To improve the health and productivity of the land to support the BLM multiple-use mission.

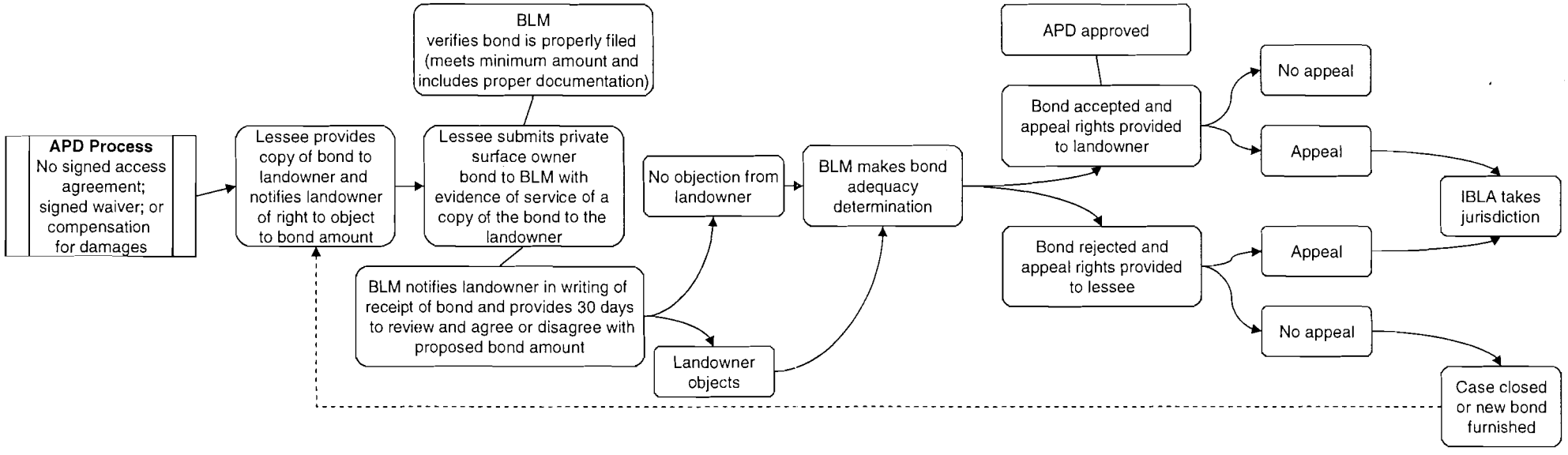
To cultivate community-based conservation, citizen-centered stewardship, and partnership through consultation, cooperation, and communication.

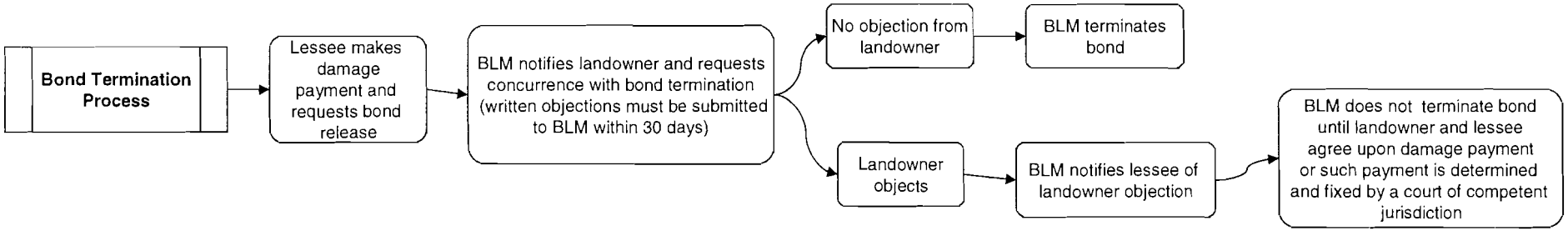
To respect, value, and support our employees, giving them resources and opportunities to succeed.

To pursue excellence in business practices, improve accountability to our stakeholders, and deliver better service to our customers.

BLM/WO/GI-06/022+3161

Private Surface Owner Bond Process





From: James_Albano@blm.gov
Sent: Friday, January 06, 2006 10:27 AM
To: Kolman, Joe
Cc: David_Breisch@blm.gov
Subject: Re: impoundment pit bonds

Happy New Year Joe!

The Buffalo Wyoming BLM Policy in the letter form sent to operators in September is attached.

(See attached file: Bonding Policy_Buffalo_WY_BLM_091605.doc)

There is no such agreement in Montana at this time. To date compared to the thousands of on-channel reservoirs and off-channel pits Montana has a very small number. The attached document summarizes the reservoirs and pits. Except for the last row in this document which represents the initial production area, no on-channel reservoirs have been approved for these purposes.

(See attached file: Montana Approved Impoundments for the Management of CBNG Produced Water.doc)

Joe, can you give me an idea of what to expect at the subcommittee meeting in Helena on January 26?

Jim Albano
Minerals Resource Specialist
Reservoir Management & Operations Section
Montana State Office
(406) 896-5111

"Kolman, Joe"
<jkolman@mt.gov>

01/03/2006 03:40 PM

To: "James_Albano \(E-mail\)" <James_Albano@blm.gov>

cc:

Subject: impoundment pit bonds

Jim,

Hope this finds you still in the holiday spirit.

I was reviewing some materials and came across some information regarding the BLM/Wyoming agreement on bonding for CBM impoundment pits.

Is there anything happening on that front in Montana?

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Montana Approved Impoundments for the Management of CBNG Produced Water

Number	Location	Surface Ownership	Mineral Ownership	Status
34-3490 (native soil, compacted clay liners)	T.9S. R.40E Section 34	Private	Federal and Private	Approved by MBOGC and BLM (Badger Hills) (**will not be constructed***)
44-3490 (native soil, compacted clay liners)	T.9S.R.40E. Section 34	Private	Federal and Private	Approved by MBOGC and BLM (Badger Hills) (**not constructed yet**)
22-3590 (native soil, compacted clay liners)	T.9S.R.40E. Section 35	Private	Federal	Approved by MBOGC and BLM (Badger Hills) (**probably will not be constructed***)
33-3390 (native soil, clay)	T.9S.R.40E. Section 33	Private	Private	Approved by MBOGC Existing (does not receive water from Federal wells)
23-0299 (native soil, clay)	T.9S.R.39E. Section 2	Private	Private	Approved by MBOGC and BLM (Dry Creek EA and Coal Creek EA) Existing (receives water from Federal wells)
Constructed Pit for Storage at Water Treatment Site (20 mil polyethylene liner)	T.8S.R.41E. Section 7	Private	Private	Approved by MBOGC and for use by BLM in Powder River Gas Coal Creek EA Completed
Various (off-channel, on-channel) stock water ponds	T.9S., R.39E. T.9S., R.40E.	Private	Private	Approved by MBOGC Existing (do not receive water from Federal wells)

*** Better impoundment sites have been identified and exiting water management options provide sufficient capacity at this time.**

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Dear Operator,

The Bureau of Land Management (BLM) has been working with the State of Wyoming to develop a process which will cooperatively cover reclamation issues, avoid duplication and insure maximum consistency associated with the construction and bonding of water impoundment facilities that receive produced water from coal bed natural gas (CBNG) wells. The BLM-Buffalo Field Office (BFO) entered into an agreement with the State of Wyoming on October 24, 2002 to address off channel pits. Under that agreement, the Wyoming Oil and Gas Conservation Commission (WOGCC) has bonded off-channel pits located over private and state minerals and BLM agreed to bond pits over federal minerals.

The BLM is currently requiring bonds for water impoundment facilities on federal surface permitted subject to Right of Way (ROW) authority (43 CFR, 2800). The BFO has now developed the processes and criteria for bonding those facilities located over federal minerals that are permitted subject to Oil & Gas authority (43 CFR, 3100). This letter provides CBNG operators the basic requirements and timeframes for this office's water impoundment bonding program subject to both the oil & gas and ROW authorities.

I. General Requirements

- The BLM will require bonds or bond riders for on-channel reservoirs and off-channel pits that receive or will receive produced water from Federal CBNG wells related to a federally approved action over federal minerals. Refer to Attachment #1.
- Bond amounts will be determined by a professional engineer's estimate of total reclamation costs
- Bond adequacy will be reviewed by BLM every 5 years and bond adjustments will be required following proper notification and documentation
- No duplicate bonding from both BLM and agencies of the State of Wyoming will be imposed on any water impoundment

II. Implementation Timeframes & Processes

These provisions became effective on September 1, 2005.

Oil & Gas Operations

Plans of Development/APD's approved prior to July, 2003 and No Condition of Approval for Future Bonding was included in the Approval

- BLM will not require a retroactive bond for water impoundments

Plans of Development/APD's approved since July, 2003 and a Condition of Approval for Future Bonding was included in the Approval

- BFO will inventory all PODs approved since August, 2003 and send a separate letter notifying operators of the required bond amount(s) and notice that they will have 90 days to post the bond(s) or bond rider. Where a professional engineer's estimate of reclamation cost was not included in the original POD submission, the operator will be required to submit this information
- BFO will identify any oversights in POD approvals where a Condition of Approval was inadvertently not attached to the POD approval, amend that approval, and notify the operator by separate letter of the bond amount(s) and that they will have 90 days to post the bond(s) or bond rider

Plans of Development/APD's submitted prior to September 1, 2005 but not approved

- BLM will put a Condition of Approval on the approved POD/APD that operators will have 90 days from the approval date to post the bond(s) or bond rider

Plans of Development submitted after September 1, 2005

- Operators must post the bond(s) or bond riders prior to approval of the POD/APD
- Operators who are uncertain whether all proposed water impoundments will be constructed at the time of POD submission should prioritize their water impoundments at the time of POD submission or following the onsite field inspection. BLM will require bonding prior to approval for all "primary" water impoundments and will add a Condition of Approval to the POD that any "secondary" water impoundments must be bonded prior to construction and that a Sundry Notice be submitted to BLM prior to construction.
- The professional engineer's estimate of total reclamation cost must be submitted with the POD/APD submission. The BLM-BFO engineer will determine the adequacy of the proposed bond amount and notify BLM-Wyoming State Office, Fluid Minerals Section (WY-921) of the adequacy of the bond or bond rider with a copy to the operator
- WY-921 will provide a decision of the bond adequacy to the operator with a copy to BFO

Termination/adjustment of Bond(s) or Bond Riders

- All requests for bond adjustment or termination of period of liability must be submitted to BLM-Wyoming State Office, Fluid Minerals Section (WY-921). WY-921 will consult with BFO who will conduct a field inspection prior to a recommendation of bond adjustment. WY-921 will issue a decision regarding bond adjustments
- Operators may request partial bond reduction as individual water impoundments are reclaimed. BLM will consider these on a case-by-case basis, provided that the bond or bond rider has included specific impoundment names or numbers and the associated bond amount
- BLM will consider, on a case-by-case basis, requests from operators to leave water impoundments in place in lieu of reclamation on fee surface overlying federal minerals. This determination will only be considered at the time of abandonment with a signed waiver from the current fee surface owner that waives liability to the United States for all past and future activities

Rights-of-Way (ROW)

- Operators must submit a bond prior to right-of-way approval
- A separate bond must be filed for each ROW action. Similar facilities may be included in a single ROW action
- The professional engineer's estimate of total reclamation cost must be submitted with the right-of-way submission. The BLM-BFO engineer will determine the adequacy of the proposed bond amount and advise the realty staff
- All requests for bond adjustment must be submitted to BLM-Buffalo Field Office realty staff. BFO realty staff will conduct a field inspection prior to a recommendation of bond adjustment. BFO will issue a decision regarding all bond adjustments
- Operators may request partial bond reduction as individual water impoundments are reclaimed. BLM will consider these on a case-by-case basis, provided that the bond has included specific impoundment names or numbers and the associated bond amount

III. Bonding Authorities, Types and Requirements

The BLM-BFO is implementing the existing authority found at 43 CFR, Part 2805 (Rights-of-Way) and 43 CFR, Part 3104 (Oil & Gas Operations) for these bonds.

The types of bonds, bond forms and information about submitting bonds are provided in Attachments #2 and #3 to this letter. Additional information is available by contacting Debra Olsen @ 307-775-6166 or Judy Oldenburg @ 307-775-6188, Land Law Examiners at the BLM-Wyoming State Office.

The applicability of BLM's water impoundment bonding requirements is associated with determining whether there is a Federal action over Federal minerals. The chart found in Attachment #1 and the scenarios found in Attachment #4 are provided to assist operators in determining the applicability of the federal and state bonding requirements. Additional information is available by contacting Richard Zander, Randy Nordsven or John Kolnik at the BLM-Buffalo Field Office at 307-684-1100.

Sincerely,

Chris E. Hanson
Field Manager

Attachment(s) 4

Attachment 1

Side by Side Comparison of the State of Wyoming and U.S. Bureau of Land Management Bonding Requirements for CBNG Produced Water Retention Reservoirs / Pits

Scenario No	Surface Estate	Mineral Estate	On-Channel Reservoirs	Off-Channel Pits
1	Private	Private	WDEQ[1]	WOGCC[2]
2	Private	State	WDEQ[1]	WOGCC[2]
3	Private	Federal	BLM[3]	BLM[3]
4	State	State	WDEQ[1]	WOGCC[2]
5	State	Federal	BLM[3]	BLM[3]
6	Federal	Federal	BLM[3]	BLM[3]
7	Federal	State or Private	BLM[3]	BLM[3] ROW in coordination w/ the WOGCC[2] and/or OSLI[2]

[1] Denotes WDEQ bonding requirement as follows:

- $7,500 for reservoirs less than 5,000 cubic yards of earthwork;
- $12,500 for reservoirs greater than 5,000 and less than 10,000 cubic yards of earthwork;
- For reservoirs greater than 10,000 cubic yards of earthwork, the security amount must be based upon a certified professional engineer's estimate of reclamation including costs to remove pipes, concrete and other structural components.

[2] Denotes WOGCC or the Office of State Lands and Investments (OSLI) bonding requirement is as follows:

- The security amount is based upon a written estimate prepared by a Wyoming registered professional engineer's estimate with expertise in surface pit remediation.

[3] Denotes BLM bonding requirement as follows:

- The security amount is based upon a professional engineer's estimate of reclamation costs for the facilities required as part of a POD or Right-of-Way submission.

Attachment #2
Oil and Gas Bonds: 43 CFR, 3104

- Bonds may be posted in the form of a new bond or as a rider to an existing individual lease bond, statewide bond or nationwide bond. If a bond rider is filed, it must be of the same type (i.e. personal or surety bond) as the underlying lease, State or Nationwide bond.
- A bond must be posted to cover the facility or facilities in the full amount (even dollars rounded up to the nearest dollar) of a professional engineer's estimate
- Acceptable forms of bonds are a Surety Bond or a Personal Bond accompanied by the following: Certificate of Deposit, Cashiers Check, US Treasury Security or an Irrevocable Letter of Credit (Form 3000-4)
- A new bond or bond rider must specify each facility being bonded by name or number and bond amount
- All reservoirs, pits and treatment facilities in a single POD can be covered by one bonding action
- Bonds or bond riders must be submitted to the: Wyoming State Office-Fluid Minerals Section (WY-921); P.O. Box 1828; Cheyenne, WY 82003
- The period of liability for bonds may be released after reclamation is successfully completed as determined by the authorized officer or the surface owner agrees in writing to the BLM to accept responsibility for the facilities after the wells in the POD have been plugged

Attachment #3
Right of Way (ROW) Bonds: 43 CFR, 2805

- A bond must be posted to cover the ROW facility or facilities in the full amount (even dollars rounded up to the nearest dollar) of a professional engineer's estimate prior to approval of the ROW
- All reservoirs, pits and treatment facilities can be covered by one ROW bonding action provided they are similar facilities and associated with a single ROW
- Bonds must specify each facility being bonded by name or number and bond amount
- Bonds will be released or adjusted after reclamation is successfully completed as determined by the authorized officer
- Acceptable forms of bond under a ROW action are cash, surety, or book entry deposit (Forms 2800-16 and 2800-17)
- Bonds must be submitted to the: Buffalo Field Office; 1425 Fort Street; Buffalo, WY 82834

Attachment #4
Bonding Scenarios

These examples are provided to assist operators in determining the type of bond that will be applicable (See also, Attachment #1)

1. Federal minerals/federal surface are being developed and produced water will go to a facility on the federal lease being developed. **3104 bond**
2. Federal minerals/federal surface are being developed and produced water will go to a facility on an adjacent federal lease/federal surface which is also being developed. **2805 bond (ROW required)**
3. Federal minerals/federal surface are being developed and produced water will go to a facility on an adjacent federal surface not being developed. **2805 bond (ROW required)**
4. Federal minerals/private surface are being developed and produced water will go to a facility on the federal lease being developed. **3104 bond**
5. Federal minerals/private surface are being developed and produced water will go to an adjacent federal lease being developed. **3104 bond**
6. Federal minerals/private surface are being developed and produced water will go to an adjacent private surface/federal lease not being developed. **3104 bond**
7. Private minerals being developed and produced water will go to facilities located on federal surface. **2805 bond (ROW required)**
8. Federal minerals/private surface are being developed and produced water will go to an adjacent private surface/private minerals. **Bond will be required by the State of Wyoming.**

HB790 Committee member poll results

As of 3/1/06
Does not include response from McGee

Note: The subcommittee intended this poll to be a guide for Sens. Wheat and McGee as they draft a proposed bill to be discussed at the March 16 meeting. These are not official votes. If responders voted for more than one item, each of those items received a vote. If people voted for something other than the original choices, those are listed after the "no action" alternative. Also, many respondents listed other comments about their choices and those will be included in the mailing packet that will go out prior to the next meeting.

These results do not include responses from non-voting members Sen. Roush and Rep. Ripley. Rep. Ripley did not respond, but the response from Sen. Roush is included in the mailing packet.

Notice of transfer of mineral lease

a. Mineral owner or developer notify surface owner.
b. County clerk notify surface owner (possible fiscal impact).
c. Federal or state minerals, agency notifies (possible fiscal impact).
d. No action
e. 30 day notice to surface owner
f. Notice to surface owner of mineral estate changes and notice to mineral owner of surface activities that could limit access (urban development).

ACTION: Vote to take no action

Notice for surface activity

a. Between 10 and 90 days (MT)
b. 20 and 180 days
c. At least 20 days (ND)
d. 1 year
e. 5 days for non-surface disturbing activity, 30 to 100 days for drilling. (WY)
f. No action
g. 20 and 180 days with waiver language
h. Operator contact person listed with assessor (taxpayer). That person must contact surface owner, if different than taxpayer.

ACTION: Vote in favor of option "B"

Components of initial notice

a. **4** Disclose work plan to extent surface owner can evaluate possible effects on land. (MT).
b. **5** Work plan, including – but not limited to - facility locations, roads, access points, wells, seismic locations, pits, reservoirs, power lines, pipe lines compressor pads, tank batteries. (WY).
c. **1** Copy of landowner rights under state/federal law and regulations. (ND)
d. **2** No action
e. Copy of brochure. Statute should more accurately reflect information available to operator at this time.
f. Disclose work plan to extent known at the time of notice so the surface owner can evaluate possible effects on land. Surface owner may waive notice.

Obligation to negotiate surface damage agreement

a. **3** Parties required to enter into "good faith" negotiations (WY)
b. **2** Lessee agrees to make satisfactory adjustment with surface owner for damages. (DNRC)

c. **2** Parties may sign a waiver, forgoing further actions under surface damage statutes.
d. **4** No action
e. Lessee shall enter into an agreement for damage settlement and annual rental with surface owner before entering premises. Parties may sign a waiver.
f. Agreement shall acknowledge dominance of mineral estate and provide for indemnification of surface owner.
g. Bonding on provisions.
h. Surface use agreement required before drilling permit issued.
i. A, B, and C. If company starts work w/o plan and agreement, $50,000 fine.

Items that may be negotiated or waived

a. **4** Road placement and quality, access points and times of access (KY)
b. **5** Onsite water impoundments, quality and disposal of produced water, construction and placement of pits (HB790 & KY)
c. **3** Use of waters on surface lands (KY)
d. **5** Weed control, restoration of surface and facilities -- fences, trees, and grasses.
e. **5** Reclamation activities, reclamation time line, and damages. (KY & IL)
    i. **3** Operator must plug well, restore surface and any improvements near as possible to pre-drilling condition
    ii. **4** May be waived by surface owner and operator if in accordance with appropriate agency regulations.
f. **4** No action
g. Location of compressors, dust mitigation
h. No restrictions on what is negotiated.
i. A through D should be negotiated. Reclamation of land to original state is required.
j. Items A through E as well as length of drilling activity. SUA may be waived.

If no agreement reached

a. **1** Drilling may proceed subject to later damage claims. (IL & KY)
    i. Operator must pay within 90 days of well completion
    ii. If fail to pay, surface owner entitled to compensation and attorney fees.
b. **2** Parties may agree to mediation at any time (WY)
c. **4** No action
d. Cannot proceed until agreement is reached. May sign waiver.
e. Post bond while process (mediation, court, arbitration) continues.
f. Post $25,000 per well bond.
g. Mediation/arbitration are options. No work w/o agreement.
h. Find a middle ground that protects surface owner and developer

Surface damages that be compensated

a. **5** Loss of agriculture production and income, land value, improvements (MT)
b. **3** Any damages. (OK & AR)
c. **1** Lost income, market value of crops, damage to water supply, value of surface land, cost to repair personal property. (WV)
d. **1** Crops, trees, shrubs, fences roads, structures, improvements, livestock, productive capacity of soil. (KY & IL)
e. **2** No action

f. Loss of agriculture production and income, land value, improvements, damage to water supply, cost to repair personal property, trees, shrubs, fences roads, structures, improvements, livestock.
g. Compensate all surface damages.

Method of compensation

a. **4** Lump sum or surface owner may elect to receive annual payments; except for exploration wells must be lump sum. (MT)
b. **2** Any manner mutually agreed to by parties. (IL)
c. Lump sum
d. **1** Annual payments
e. **3** No action
f. Surface damage agreement must include up front payment for land damage & disruption in addition to annual rental for loss of production and value for the life of the well and until reclamation complete.
g. Item A, but with addition of enforcement mechanism.

If no agreement on damages

a. **4** Court action (MT).
b. **4** Mediation if agreed to by both parties (WY).
c. **1** Arbitration
    a. Each party selects 1 appraiser who selects a 3rd. (DNRC)
    b. Parties agree on 1 appraiser. (TN)
d. **2** No action
e. Mediation with qualified staff and/or fine
f. If surface owner rejects offer, may sue developer. Legal fees, costs and interest awarded to surface owner if court determines damages in amount higher than developer offered.
g. Bond on and parties required mediating. If mediation fails, binding arbitration.

Enforcement of surface agreement violations

a. **2** Montana Board of Oil and Gas Conservation
b. **3** Courts
    i. 1 Treble damages if: (OK)
        1. Operator drills before agreement or w/o notice
        2. Fails to keep required bond
        3. Fails to notify landowner, fails to ask for appraiser
c. **3** No action
d. Detail what constitutes breech. Operator pays attorney fees if landowner prevails in lawsuit.
e. MBOGC, but only for surface notice violations.
f. Mediation if both parties agree.
g. Violations reported to DNRC and fines levied.
h. MBOGC, mediation or courts – penalties large enough to get landowner respect, but not block production of mineral right.

Surface bonding

a. No additional surface bond (MT)
b. **3** Required (OK)
c. **2** Required only when no agreement in place (BLM & WY)
d. **4** No action
e. Required for surface damages, including surface and groundwater
f. Require both MBOGC bond (current) as well as surface “bond on.”

Surface bond terms (if surface bond required)

a. **1** $2,000 per well or blanket. Landowner may object. (WY)
b. $2,000 per well, $10,000 blanket (SD)
c. $25,000. (OK).
d. At least $1,000. (BLM)
e. **4** No action
f. Bond set by MBOGC for reclamation
g. Reflect actual cost of reclamation.
h. Wyoming statute for surface damage; MBOGC continue to set reclamation bond.
i. Use a professional engineer's estimate; require a review in five years to keep the bond current with inflation.
j. Bond higher than $2,000, no blanket, landowner input.
k. Item A, blanket adjusted according to number of wells.

Bond based on activity type

a. **6** Conventional oil and gas or CBM
b. **2** Amount of produced water
c. **2** Quality of produced water
d. 2 Water disposal method: discharge, irrigation, impoundment (BLM), reinjection
e. **3** No action
f. Handled by MBOGC under rules
g. Conventional and CBM. Bond for water quality, disposal method, discharge, irrigation, impoundments, reinjection, land disturbance, well sites.

Handling appeals, holding bond, changes to bond (if bond required)

a. **5** MBOGC
b. Independent arbiter
c. **1** Other agency
d. **4** No action
e. After mediation, appeal to arbitration panel.
f. Post bond to Secretary of State.

Who may appeal bond (if bond required)

a. Surface owner
b. Mineral developer
c. **7** Either surface or mineral holder
d. Other
e. **4** No action

Location of habitable structures

a. **4** No drilling within 200 feet of residence or barn w/o consent (DNRC)
b. Not located w/in 125 feet of wells or 50 feet of other equipment (OK)
    i. May be waived by agreement of landowner and operator
c. **2** No action
d. Handled by MBOGC under rules
e. No drilling within 1320 feet of all items listed in items a & b
f. No drilling within 200 feet of wells or surface water.
g. No drilling within 200 feet of habitable residence.
h. No drilling within 200 feet of residence or barn w/o consent. May be waived by agreement.
i. Surface owner determines where drilling occurs.

Water wells affected by drilling operations

a. **6** Offer mitigation agreement to water right/permit holder within 1 mile of CBM well or ½ mile of water well affected by CBM well. Not required to address loss of water quantity not related to production of groundwater by CBM development (MT)

b. **1** Well owner may recover costs to reestablish quality or quantity of water if drilling operation is within one mile of well, a certified water test completed 1 year prior to drilling and the action brought within 6 years of discovery. (ND)

c. **3** Landowner adjacent to drilling operation whose land receives water may file claim against mineral developer to recover damages resulting from natural drainage of waters contaminated by drilling operations. (ND)

d. 3 No action

e. Petroleum industry liable for any water (ground and surface) damage. Above damages to be determined by Montana Bureau of Mines and Geology.

f. Adjacent landowners should be notified and given the opportunity to test and protect their water before any damage is done. If damage does occurs they should be able to recover damages. Company subject to fines if it does not negotiate in good faith before drilling.